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BELL'S SALE OF FOOD AND DRUGS ACTS.

BELL'S
SALE OF FOOD & DRUGS ACTS

SEVENTH EDITION

WITH SUPPLEMENT TO 1927

CONTAINING

THE SALE OF FOOD AND DRUGS ACT, 1927

THE SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926

BY

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PREFACE TO THE SEVENTH EDITION.

SINCE the publication of the last edition of this book in October, 1914, part of the law relating to the Sale of Food and Drugs has fallen into considerable confusion. During the War many Orders and Regulations affecting the food of the nation and its sale were issued by many Government Departments ; since the Peace more Orders have been made by fewer Departments ; and all of these are constantly being repealed, varied or added to. The publication of the present edition has been twice postponed to enable new matter to be included or obsolete matter to be excised ; but the present Editor hardly dares to hope that the book is really complete even at the present moment. New Orders made after the body of the book was in print have been inserted at the end of the Appendix, and where existing Orders have been repealed a note to that effect has been added.

The principal alterations of the law since 1914 are the passing of the Milk and Dairies (Consolidation) Act, 1915, its postponement until September, 1925, and its temporary replacement by the much abridged Amendment Act of 1922, which provides

for the sale of milk of special quality under special designations and imposes heavy penalties upon sellers of tuberculous milk. Attention may also be called to the lowering of the minimum alcoholic strength of brandy, whisky and rum, which was first permitted by an Order of the Food Controller, and is now continued by the Licensing Act, 1921.

The Case law has been brought up to date, and Mr. ROBINSON has revised and enlarged his Chemical Notes.

C. F. LLOYD.

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March, 1923.

PREFACE TO SUPPLEMENT.

At the request of the Board of Trade, the Food Council in 1925 and 1926 devoted their attention to the question of preventing short weight and measure in the retail sale of articles of food, and in February of the latter year they presented their report and recommended legislation. The Sale of Food (Weights and Measures) Act, which received Royal Assent on December 15th, 1926, is the direct result of the Report of the Food Council, and embodies nearly the whole of that body's conclusions.

This Act is of great importance. It will be administered in many areas by the same local authorities, through the same officers, as the Sale of Food and Drugs Acts themselves. It has been thought desirable, therefore, to enlarge the scope of this book by including the Act of 1926, with notes, so that questions of the quantity, as well as the quality, of food sold may be dealt with. This has necessitated also the inclusion of a number of sections of the earlier Weights and Measures Acts, with which the new Act is to be construed. At the same time, opportunity has been taken to add the Sale of Food and Drugs Act, 1927, and to refer to the numerous statutory regulations dealing with

food, mainly under the Public Health (Regulations as to Food) Act, 1907, which have recently been made.

Decisions under the earlier Acts have not been numerous since the publication of the seventh edition, the greater part of which has not needed to be revised or rewritten. It has therefore seemed appropriate to include the new matter, including notes on recently decided cases, in a supplement, rather than to issue an entirely new edition. The supplement has been separately indexed, but the table of statutes and table of cases at the beginning of the volume have been revised to include references in the supplement.

C. F. L.
R. A. R.

August, 1927.

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THE

SALE OF FOOD AND DRUGS ACTS, 1875—1907.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 VICT. c. 63.)

An Act [*to repeal the Adulteration of Food Acts, and*] *to make better provision for the Sale of Food and Drugs in a pure state.* [11th August, 1875.]

[*Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:*

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:]

Repeal.—The words enclosed in square brackets are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

1. *Repeal of Statutes.*—[*From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and*

twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.]

The enactments repealed by this section are the Adulteration of Food and Drink Act, 1860; s. 24 of the Sale of Poisons and Pharmacy Act, 1868; s. 3 of the Sale of Poisons (Ireland) Act, 1870; and the Adulteration of Food and Drugs Act, 1872. These enactments remain repealed notwithstanding the fact that s. 1 is itself repealed by the first Statute Law Revision Act of 1883.

Other Acts relating to Adulteration.—The following enactments, contained in the Revenue Acts, relate to the adulteration of certain specific articles of food, and are enforced by the Commissioners of Inland Revenue.

[1718] 5 Geo. 1, c. 11, s. 23, relating to coffee;

[1724] 11 Geo. 1, c. 30, ss. 5, 9, 39, relating to tea and coffee;

[1730] 4 Geo. 2. c. 14, s. 11, relating to tea;

[1733] 7 Geo. 2, c. 19, s. 2, relating to hops;

[1776] 17 Geo. 3, c. 29, ss. 1—6, 9, relating to tea;

[1882] 45 & 46 Vict. c. 41, ss. 5 and 6, relating to substitutes for coffee and mixtures of coffee and other articles;

[1885] 48 & 49 Vict. c. 51, s. 8, relating to beer.

See also s. 30 of this Act (*post*, p. 98), under which the Commissioners of Customs are invested with certain powers over the importation of tea, and s. 1 of the Act of 1899, and s. 5 of the Act of 1907, relating to the importation of margarine, adulterated or impoverished milk or butter, separated milk, and any other article to which the section may be made to apply by Order in Council (*post*, pp. 135, 179).

The Bread Acts of 1822, 1836 and 1922 (3 Geo. 4, c. 106, 6 & 7 Will. 4, c. 37, and 12 & 13 Geo. 5, c. 28) relate

to the sale and adulteration of bread in London and the provinces.

The adulteration of tobacco does not fall within the scope of the Sale of Food and Drugs Acts, but is provided for by the Excise laws, and by the Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35).

The Public Health Acts contain a number of provisions dealing with the sale, importation, etc., of unwholesome food. See, for example, the Public Health Act, 1875, ss. 116—119, and the Public Health (Regulations as to Food) Act, 1907. And the Milk and Dairies (Amendment) Act, 1922, *post*, p. 189, is designed to prevent the sale of unwholesome milk and cream.

2. *Interpretation of Words.*—[*The term "food" shall include every article used for food or drink by man, other than drugs or water :*] (*a*)

The term "drug" (*b*) shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough (*c*) :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(*a*) **"Food."**—This definition of the term "food" has been repealed by the Act of 1899, s. 27, and Schedule, and replaced by s. 26 of that Act, *post*, p. 171.

(*b*) **"Drug."**—Difficulty may arise under this definition with regard to those substances which have a commercial as well as a medicinal use, *e.g.*, sulphur, borax, carbolic acid, sulphuric acid. In *Fowle* v. *Fowle* (1896), 60 J. P. 758 ; 75 L. T. 514 ; 18 Cox C. C. 462, a grocer had sold a quarter of a pound of beeswax which proved to be adulterated with fifty per cent. of paraffin. It was proved that beeswax is used in the preparation of medicines, and is included in the

British Pharmacopœia. The justices dismissed the summons on the ground that beeswax was not a drug. The court (GRANTHAM and WRIGHT, JJ.) held that it is a question of fact for the justices to decide whether, under all the circumstances of each case, the article is a drug, and that under the circumstances of this case they were right in holding that the beeswax was not a drug; but GRANTHAM, J., seemed to imply that if the sale had been by a chemist, the result might have been different. From the above case, it is suggested that the test is whether the article was sold for medicinal use or not. In *Houghton* v. *Taplin* (1897), 13 T. L. R. 386, HAWKINS, J., was of opinion that arsenical soap containing no arsenic was not a drug. There are some articles of quasi-confectionery, such as linseed and liquorice lozenges, which are on the border line between drugs and articles of food when sold by a druggist, and it is difficult to say that distilled water, about which some controversy has arisen, is either a food or a drug (see s. 26 of the Act of 1899, *post*, p. 171), although it may be a vehicle for the administration of drugs.

(*c*) **Cinque Port.**—Provision for the liberty of a Cinque port is made by s. 32, *post*, p. 99; also by s. 7 of the Act of 1879, *post*, p. 119.

DESCRIPTION OF OFFENCES.

3. *Mixing Injurious Ingredients with Food.*—No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health (*a*), with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be im-

prisoned for a period not exceeding six months with hard labour.

This section, which relates to the adulteration of articles of food with substances injurious to health, is much more stringent than the sixth and subsequent sections, which primarily relate to cases where harmless substances only have been used. But it should be noted that a person may be convicted of an offence under s. 6, even though the facts would have warranted a prosecution under this section. This was held by Lord ALVERSTONE, C.J., and LAWRANCE and PHILLIMORE, JJ., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290; 65 J. P. 646; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684, where two beer-sellers had sold beer containing arsenic which had been added to the beer without their knowledge or consent.

Prosecutions are now seldom instituted under this section. This may be owing partly to the fact that adulteration with injurious materials is not very prevalent, partly to the heavy expense which is usually incurred in obtaining a conviction, arising from the necessity of employing scientific and professional witnesses to prove that the articles are injurious to health, and partly because it is easier to secure a conviction under s. 6, under which no question of *mens rea* arises. Considerable diversity of opinion exists among medical and scientific men as to whether certain articles are injurious to health or not. In *Summers* v. *Grist* (1896), 60 J. P. 346, the justices at South London Sessions held that it was an offence under this section to sell a 1-lb. bottle of peas knowing it to contain three grains of sulphate of copper. In *Friend* v. *Mapp* (1904), 68 J. P. 589; 2 L. G. R. 1317, the justices found that 2·55 grains of sulphate of copper in a pound of peas was not injurious to health, and the High Court, though they did not seem to agree with the decision, refused to disturb it.

As to the use of injurious colouring matters and preservatives, see the Appendix, *post*, pp. 223, 275.

By s. 7 of the Act of 1907, *post*, p. 182, the Local Government Board are empowered to make regulations as to the use of preservatives in butter, etc.; and, by s. 4 of the Milk and Dairies (Amendment) Act, 1922, *post*, p. 193, the use of colouring matter in milk is prohibited.

Mens Rea.—Guilty knowledge is a necessary ingredient of offences under this section, see s. 5, *post*, p. 8, and *Taylor* v. *Nixon*, [1910] 2 I. R. 94, and compare the cases mentioned in note (*b*) to s. 9 of this Act, *post*, p. 41.

(*a*) **Article Injurious to Health.**—The material question is, not merely whether the added ingredient is injurious to health, but whether the article when mixed with the ingredient is injurious (*Hull* v. *Horsnell* (1904), 68 J. P. 591; 92 L. T. 81; 21 T. L. R. 32; 20 Cox C. C. 759; 2 L. G. R. 1280).

It is not necessary that the article should be injurious to the health of every individual. Thus in *Cullen* v. *McNair* (1908), 72 J. P. 376; 99 L. T. 358; 24 T. L. R. 692; 6 L. G. R. 753, where cream, an article likely to be consumed by infants and invalids, was mixed with boric acid in a proportion harmless to healthy adults but injurious to infants and invalids, it was held that the appellant had been rightly convicted; and the vendor cannot escape by selling the mixture as "preserved cream" (*Haigh* v. *Aerated Bread Co., Ltd.*, [1916] 1 K. B. 878; 80 J. P. 284; 85 L. J. K. B. 880; 114 L. T. 1000; 32 T. L. R. 427; 14 L. G. R. 665).

Liability of Limited Company.—A limited company can be prosecuted under this section (*Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1; 66 J. P. 774; 71 L. J. K. B. 656; 87 L. T. 51, *per* CHANNELL, J.). In the above case Lord ALVERSTONE, C.J., was doubtful on the point, but in *Chuter* v. *Freeth and Pocock, Limited*, [1911] 2 K. B. 832; 75 J. P. 430; 80 L. J. K. B. 1322; 105 L. T. 238; 27 T. L. R. 467; 9 L. G. R. 1055, he treated the judgment of CHANNELL, J., as being law. This case was followed in *R.* v. *Ascanio Puck, Limited* (1912), 76 J. P. 487; 29 T. L. R. 11; 11 L. G. R. 136.

Liability of Master.—A person under this and the subsequent section is liable for the acts of his or her servants in the ordinary course of business, subject to the provisions of s. 5, *post*. The word "permit," in this and the 4th section, extends to neglect of reasonable supervision. See also note (*b*) to s. 6, *post*, p. 11.

Common Law Misdemeanor.—To mix or knowingly permit servants to mix unwholesome ingredients with any article of food which is intended for sale is a misdemeanor at common law. In *Rex* v. *Dixon* (1814), 3 M. & S. 11 ; 4 Camp. 12 ; 15 R. R. 381, a baker was convicted for supplying children at an asylum with bread into which his servants, to his knowledge, had introduced alum. See also *R.* v. *Stevenson* (1862), 3 F. & F. 106 ; and *Burnby* v. *Bollett* (1847), 16 M. & W. 644 ; 17 L. J. Ex. 190 ; 11 Jur. (o.s.) 827. And a person who knowingly sells food or drugs under a false description may be guilty of obtaining money by false pretences (*R.* v. *Foster* (1877), 2 Q. B. D. 301 ; 41 J. P. 295).

Warranty presumably no Defence.—In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817 ; 65 J. P. 743 ; 70 L. J. K. B. 795 ; 85 L. T. 50 ; 20 Cox C. C. 18, BIGHAM, J., expressed an opinion that a warranty under s. 25 of this Act would be no defence to a prosecution under this or the following section. The point, however, is of but little importance, since by s. 5, *infra*, the accused is entitled to an acquittal if he proves that he had no guilty knowledge. See also note (*b*) to s. 25, *post*, p. 79.

Label or Disclosure presumably no Defence.—The label defence under s. 8 does not apply to this section. And it is submitted that the seller is not protected by disclosing the injurious ingredient at the time of sale, for the decisions to that effect under s. 6 depend upon the words " to the prejudice of the purchaser " and " the article demanded," which are not found here. See the notes to that section. The judgments of Lord ALVERSTONE, C.J., and PICKFORD, J., in *Williams* v. *Friend*, [1912] 2 K. B. 471 ; 76 J. P. 301 ; 81 L. J. K. B. 756 ; 107 L. T. 93 ; 23 Cox C. C. 86 ; 28 T. L. R. 407 ; 10 L. G. R. 494, seem to support this proposition ; and though there are some dicta to the contrary in *Cullen* v. *McNair*, *ante*, p. 6, they were not necessary to the decision, and it does not appear that the attention of the court was directed to the difference in the wording of the two sections.

4. *Mixing Drugs with Injurious Ingredients.*—No person shall, except for the purpose of compounding as hereinafter described (*a*), mix, colour, stain, or

powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

The notes to s. 3, *supra*, are also applicable to this section, with this difference, that it is not necessary to prove direct injury to health. It is sufficient to prove that the quality or potency of the drug is deficient.

(*a*) **Compounding as hereinafter described.**—These words are meaningless. See note (*l*) to s. 6, *post*, p. 34.

5. *Proof of Absence of Knowledge.*—Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Guilty Knowledge.—This section renders it unnecessary to prove any *mens rea* in cases of prosecutions under the two foregoing sections, for it throws upon the defendant the onus of proving that there was no *mens rea*. Moreover it is not sufficient to entitle the defendant to exemption under this section for him to prove that he had no knowledge of the adulteration. He must also prove that he could not have obtained that knowledge with reasonable diligence.

Liability of Master.—This section will not serve as a defence for a person who, neglecting to exercise a reasonable supervision over his or her servants, affords them an opportunity of adulterating an article of food in violation of ss. 3, 4, but it is, of course, competent for a person charged under ss. 3, 4, to prove that he or his servants had been purposely deceived.

6. *Sale of Articles of Food and of Drugs not of the Proper Nature, Substance, and Quality.*—No person (*a*) shall sell (*b*) to the prejudice of the purchaser (*c*) any article of food or any drug which is not of the nature, substance, and quality (*d*) of the article demanded (*e*) by such purchaser (*f*) under a penalty(*g*) not exceeding twenty pounds: Provided that an offence shall not be deemed to be committed under this section in the following cases (*h*); that is to say,

(1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof (*i*);

(2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent (*k*);

(3) Where the food or drug is compounded as in this Act mentioned (*l*);

(4) Where the food or drug is unavoidably (*m*) mixed with some extraneous matter in the process of collection or preparation.

This is a most important section, and the majority of prosecutions under the Sale of Food and Drugs Acts are instituted under it. It may be observed that a person may be prosecuted under this section even though the facts proved would have supported a conviction under other sections of the Act, *e.g.*, ss. 3 and 4 (*Goulder* v. *Rook*, *ante*, p. 5), and s. 7 (*Beardsley* v. *Walton*, *infra*, p. 34).

Formalities to be Observed.—In taking out a summons under this section, the provisions of s. 19 (2) of the Act of 1899, which replaces s. 10 of the Act of 1879, should be strictly observed (see p. 157, *post*).

(*a*) **Liability of Limited Company.**—A limited company can be prosecuted under this section. See *Booth* v. *Helliwell*, [1914] 3 K. B. 252; 78 J. P. 223; 30 T. L. R. 529, where a grocer formed himself into a limited company of which he was director, manager, secretary, and practically the only shareholder; adulterated butter having been sold in the shop, the court held that both the company and the assistant who actually sold could be prosecuted, but not the grocer himself. See also *Pearks, Gunston and Tee, Limited* v. *Ward* and *Chuter* v. *Freeth and Pocock, Limited*, *ante*, p. 6. If the business of the company is being carried on by a receiver, it is presumed that he is the person to be prosecuted, but the point has not yet been judicially decided.

(*b*) **Guilty Knowledge.**—There is no doubt that there is no necessity to prove *mens rea* in this section of the Act. This being a penal statute, such a construction is contrary to the maxim, "*actus non facit reum nisi mens sit rea*," but such words as "knowingly" or "with knowledge" appear only in s. 5; and in *Betts* v. *Armstead* (1888), 20 Q. B. D. 771; 52 J. P. 471; 57 L. J. M. C. 100; 58 L. T. 811; 36 W. R. 720; 16 Cox C. C. 418, CAVE, J., said: "It was suggested that the justices ought to read into the section (s. 6) the word 'knowingly.' . . . That word is not to be found in the section, and it is clear from the words of other sections of the Act that the word 'knowingly' was intentionally omitted from s. 6." See also the cases in note (*b*) to s. 9, *post*, p. 41. As to when *mens rea* is necessary to constitute offences under other sections of the Sale of Food and Drugs Acts, see the judgment of GIBSON, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

Liability of Master.—The general rule of law is that a master is not criminally responsible for the acts of his servant, if they are done without his knowledge or authority, expressed or implied (*Harrison* v. *Leaper* (1862), 26 J. P 69 ; 5 L T. 640 ; *Core* v. *James* (1871), L. R. 7 Q. B. 135 ; 41 L. J. M. C. 19 ; 25 L. T. 593 ; 20 W. R. 201) ; but that he is responsible when there is reasonable evidence of an expressed or implied, actual or constructive, authority on his part for the commission of an act (see *Searle* v. *Reynolds* (1866), 7 B. & S. 704 ; 35 L. J. Q. B. 18 ; 14 L. T. 518 ; and *Wilson* v. *Stewart* (1863), 3 B. & S. 913 ; 32 L. J. M. C. 198 ; 8 L. T. 277 ; 11 W. R. 640 ; 9 Jur. (N.S.) 1130). If a man's wife manages his business in his absence, and sells an adulterated article, the husband in this case becomes criminally responsible in respect of the sale as if it had been executed by his servant or agent. If this were otherwise, tradesmen or other persons could always evade the law.

Under this section a master is responsible for the *unauthorised* acts of his servant, or even of a stranger. In *Brown* v. *Foot* (1892), 56 J. P. 581 ; 61 L. J. M. C. 110 ; 66 L. T. 649 ; 17 Cox C. C. 509, the appellant was a retail milk seller, and it was his practice, on receiving the cans of milk from the country, to take a sample from each can before it was sent out for sale. He also published a warning to his servants who sold the milk from the various cans, that any servant whose can of milk did not correspond with the sample taken from it would be liable to dismissal. One of his servants admitted that he had watered his can previously to selling some of its contents to an inspector, and it was held by HAWKINS and WILLS, JJ., that the appellant (the master) had been rightly convicted under this section for selling adulterated milk when, as has been seen, he had not only expressly forbidden his servants to adulterate, but had also taken special precautions to prevent them from doing so. In the course of his judgment WILLS, J., said : " The servant was admittedly employed in the general business of the appellant in selling milk by retail. . . . Therefore the appellant must see that the servant within the scope of his authority does not contravene the Act."

The above case was followed and approved in *Parker* v. *Alder*, [1899] 1 Q. B. 20 ; 62 J. P. 772 ; 68 L. J. Q. B. 7 ; 79 L. T. 381 ; 19 Cox C. C. 191, in which a dairy farmer at

Wantage contracted to supply pure milk to be delivered to the purchaser at Paddington station. In accordance with the contract, he delivered a churn of pure and unadulterated milk to the Great Western Railway at the local station for conveyance to Paddington. On its arrival at Paddington the milk was found to contain nine per cent. of added water. The magistrate found as a fact that the water had been added unlawfully during the railway journey by someone without the knowledge or authority of, and without any default or negligence on the part of, the seller or any servant of his:—*Held*, by Lord RUSSELL OF KILLOWEN, C.J., and WILLS, J., that the seller was liable to conviction for an offence under s. 6 of this Act, and Lord RUSSELL, in the course of his judgment, said: "Assuming that the respondent [the seller] was entirely innocent morally, and had no means of protecting himself from the adulteration of this milk in the course of transit, has he committed an offence against these Acts? I think he has. . . . It has been decided in *Brown* v. *Foot*, *supra*, in the clearest manner that an innocent vendor of milk is undoubtedly liable for the unauthorised act of his servant in adulterating it . . . and there is really no material difference between that case and this, because a vendor is no more able to prevent the adulteration by a dishonest servant than he is to prevent adulteration by strangers, such as the servants of the railway company. This is one of the class of cases in which the legislature has, in effect, determined that *mens rea* is not necessary to constitute the offence." This case was followed in *Andrews* v. *Luckin* (1917), 82 J. P. 31; 87 L. J. K. B. 507; 117 L. T. 726; 34 T. L. R. 33; 26 Cox C. C. 124; 16 L. G. R. 199, where the justices found that the milk was all right when delivered to the railway company, but no evidence was given that it had not been interfered with on the journey.

Houghton v. *Mundy* (1910), 74 J. P. 377; 103 L. T. 60; 8 L. G. R. 838, is another case of a master being held liable for an act of his servant committed against express orders.

Kearley v. *Tonge* or *Tyler* (1891), 56 J. P. 72; 60 L. J. M. C. 150; 65 L. T. 261; 17 Cox C. C. 328, in which a different view was taken, seems to be overruled by the above cases. See also *Farley* v. *Higginbotham* in note (*g*) to s. 17 of this Act, *post*, p. 67.

It has been held in Scotland that if the servant is acting altogether outside the scope of his authority the master is not liable ; see *Lindsay* v. *Dempster*, [1912] S. C. (J.) 110 ; 49 Sc. L. R. 999, where the servant was told to deliver milk to customers who had previously ordered it, but sold part of it to an inspector on the way. This case was followed in *Wilson* v. *Fleming* (1913), 51 Sc. L. R. 72, which also decided that in Scotland if the master is prosecuted in respect of a sale by his servant, the complaint must state in terms that the sale was by the servant and not by the master.

In England the law is doubtful. In *Elder* v. *Bishop Auckland Co-operative Society, Limited* (1917), 81 J. P. 202 ; 86 L. J. K. B. 1412 ; 117 L. T. 281 ; 33 T. L. R. 401 ; 61 S. J. 593 ; 26 Cox C. C. 1 ; 15 L. G. R. 579, milk was consigned to the society by train. On arrival it was taken away by a servant of the society, whose orders were to sell to no one except a member of the society who had ordered it beforehand. He sold a sample to an inspector, and the court held that he had sufficient authority to sell, though a limited one. But in *Whittaker* v. *Forshaw*, [1919] 2 K. B. 419 ; 83 J. P. 210 ; 88 L. J. K. B. 989 ; 121 L. T. 320 ; 35 T. L. R. 487 ; 63 S. J. 608 ; 17 L. G. R. 457 ; 26 Cox C. C. 475, a milkman had a contract to deliver a pint of milk to a customer's house every morning. He sent it in a can, carried by his daughter aged thirteen. Being stopped by an inspector, who demanded a pint of milk, she was afraid to refuse, and gave it to him. The justices held that she had no authority, and that there was no sale to the inspector, and the majority of the court held that they were entitled so to hold. *Lindsay* v. *Dempster* was followed in the latter case, and distinguished in the former.

Liability of Servant.—A servant can also be convicted under this section as the actual seller (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181 ; 55 J. P. 775 ; 60 L. J. M. C. 146 ; 65 L. T. 149 ; 39 W. R. 607). In that case the servant of a dairy company was convicted of selling milk adulterated with water, and Lord COLERIDGE, C.J., said : " In my opinion, a person who takes the article in his hand and performs the physical act of transferring the adulterated thing to the purchaser is a person who sells within this section." It should be noted that this decision does not prevent the master from being convicted as well as the servant. *Hotchin* v. *Hind-*

marsh was referred to with approval in *Brown* v. *Foot, supra.* See also *Booth* v. *Helliwell, ante*, p. 10.

Aiding and Abetting.—It must not be forgotten that any person who knowingly helps another to commit an offence is guilty of "aiding and abetting" the principal offender (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5).

Unlawful Sale.—The fact that a sale of adulterated milk took place on a Sunday, during hours when the sale of milk is prohibited by the Sunday Observance Act, 1677 (29 Car. 2, c. 7), does not prevent the seller from being convicted and fined (*Elder* v. *Kelly*, [1919] 2 K. B. 179; 83 J. P. 166; 88 L. J. K. B. 1253; 121 L. T. 94; 35 T. L. R. 391; 17 L. G. R. 413).

(*c*) **"To the Prejudice of the Purchaser."**—The cases collected in the following note illustrate two main propositions: (1) That a purchaser cannot be prejudiced when notice is given to him at the time of the sale that the article sold is not of the nature, substance, and quality of the article he demands; and that (2) in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that he has sustained actual prejudice or damage.

With regard to the first point, it is now well settled that where the seller of an article brings to the purchaser's knowledge the fact that the article sold is not of the nature, substance, or quality of the article he demands, the sale is not to the prejudice of the purchaser within the meaning of this section. This was decided in *Sandys* v. *Small* (1878), 3 Q. B. D. 449; 42 J. P. 550; 47 L. J. M. C. 115; 39 L. T. 118; 26 W. R. 814, where COCKBURN, L.C.J., in giving judgment, said: "The provisions of the 6th section seem to me to apply to cases where a seller professes to sell to the purchaser an article as being of a certain denomination, whereas the article has been altered by an admixture of some other ingredient, and it seems that when the article is so altered this must be considered to have been done to the prejudice of the purchaser, unless it is duly and sufficiently brought to his knowledge; but if the alteration of the article . . . is brought to the knowledge of the purchaser, and he chooses to purchase it notwithstanding, it can never have been intended that such a transaction should be interfered

with." See also *Williams* v. *Friend*, [1912] 2 K. B. 471; 76 J. P. 301; 81 L. J. K. B. 756; 107 L. T. 93; 28 T. L. R. 407; 10 L. G. R. 494. But it is not necessary to disclose what the mixture actually is (*ibid. per* Pickford, J.).

In *Higgins* v. *Hall* (1886), 51 J. P. 293, the appellant's wife, who was serving in his shop, when asked by a purchaser for a pound of coffee, said, "We don't keep it," but added, pointing to some tins labelled "coffee and chicory," that she sold that as a mixture. She then sold some of the mixture, which was found to contain only about 30 per cent. of coffee:—*Held*, that the justices were wrong in convicting the appellant of selling coffee, for his wife had sold only a mixture, as she was entitled to do if she represented that it was a mixture. Moreover, the purchaser had asked for a mixture and had got it. See also *Sandys* v. *Jackson*, *post*, p. 115.

In *Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 47 J. P. 391; 52 L. J. M. C. 44; 48 L. T. 226; 31 W. R. 501, an inspector bought from the appellant three pints of gin, which proved to be more than thirty-five degrees under proof, but at the time of the sale the appellant called his attention to the following printed notice which was hanging up in the room: "All spirits sold in this establishment are of the same quality as heretofore, but to meet the requirements of the Food and Drugs Adulteration Act they are now sold as diluted spirits; no alcoholic strength guaranteed":—*Held*, by Manisty and Mathew, JJ., that there was no sale to the prejudice of the purchaser. *Palmer* v. *Tyler* (1897), 61 J. P. 389, was a case in which an exactly similar notice was used.

In *Dawes* v. *Wilkinson*, [1907] 1 K. B. 278; 71 J. P. 23; 76 L. J. K. B. 182; 96 L. T. 26; 23 T. L. R. 34; 21 Cox C. C. 340; 5 L. G. R. 1, the facts were similar, but the notice was: "All spirits sold in this establishment are of the same quality and strength as heretofore, but, in order to comply with the Food and Drugs Act, will not be of any guaranteed strength." Lord Alverstone, C.J., and Ridley, J. (*dissentiente* Darling, J.), distinguished *Gage* v. *Elsey*, *Sandys* v. *Small*, and *Palmer* v. *Tyler*, and held that the notice was insufficient, because it did not bring to the mind of the purchaser the fact that the spirit was diluted.

In *Morris* v. *Johnson* (1890), 54 J. P. 612, the facts were as

follows: Two servants of an inspector went into a public-house and entered a public room called the club room, passing by the bar and kitchen on their way. They then called for half-a-pint of whisky and were served with it in the club room. Upon analysis the whisky proved to be 37½ degrees under proof, and the usual proceedings under this Act were instituted. There was evidence that at the time of the sale there was a notice posted in the bar and the kitchen to this effect: "All spirits sold at this establishment are diluted with water according to price," but there was no such notice in the club room. It was further proved that the bar and the kitchen were visible to anyone approaching the club room from the entrance, and there was but one entrance to the house; that neither of the two men saw or knew of any notice posted in any part of the house, and that nothing was said at the time of the sale as to the quality of the whisky. But there was nothing to show that the two men did not in fact know that the spirits sold at this house were diluted. Upon these facts the justices refused to convict, but stated a case for the opinion of the High Court. It was there held by FRY, L.J., and MATHEW, J., that the justices, before they came to their decision, ought to have inquired whether the men knew that the practice at the respondent's house was to sell only diluted spirits, in which case no conviction was proper. "The purchasers' complaint," said MATHEW, J., "is that they did not see the notice; but then there was no finding in the case whether they did not know well enough of the diluting of all spirits before, sold at the respondent's house. If the justices find that the men did not know that spirits were sold diluted, then there should have been a conviction. But if they did know, then there should be no conviction." See also the judgment of Lord ALVERSTONE, C.J., in *Bundy* v. *Lewis* (1908), 72 J. P. 489; 99 L. T. 833; 21 Cox C. C. 744; 7 L. G. R. 55.

Morris v. *Askew* (1893), 57 J. P. 724, appears to have been a similar case, but it has not been fully reported.

Morris v. *Johnson* and *Morris* v. *Askew* seem to be inconsistent with the later decision in *Pearks, Gunston and Tee, Limited* v. *Ward*, [1902] 2 K. B. 1; 66 J. P. 774; 71 L. J. K. B. 656; 87 L. T. 51, in which the King's Bench Division held that a sale may be to the prejudice of the purchaser within s. 6 although the purchaser had special knowledge,

not derived from information given by the seller, that the article was not of the nature, substance, and quality demanded by him; and that the test is whether the sale would have been to the prejudice of a purchaser who had not that special knowledge. Lord Alverstone, C.J., said: "The question, in my opinion, is not what is the actual knowledge of the particular purchaser, except in so far as that knowledge is derived from information given by the seller either by notice, by the nature of the article itself, or by what passed at the time of the purchase; the question is what would be the position, not of a skilled purchaser like an inspector, but of an ordinary person purchasing the article without any special knowledge." Darling, J., said: "There is a sale to the prejudice of the purchaser, if a purchaser in the abstract would be prejudiced, although the actual purchaser may, for some reason peculiar to himself, not be prejudiced." And Channell, J., expressed the same opinion. As to this point see also s. 2 of the Act of 1879, *post*, p. 110, and *Morton* v. *Green* (1881), 8 Rettie (J.C.) 36; 4 Coup. 437.

In *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889; 66 J. P. 422; 71 L. J. K. B. 385; 86 L. T. 325; 50 W. R. 605, butter was sold blended with milk in such a way as to contain 7·8 per cent. of water above the permissible maximum of 16 per cent. There was a notice in a conspicuous position in the shop to the following effect: "Notice. Pearks' butter as sold at this establishment is choicest butter blended with English full cream milk by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour which has made Pearks' butter so famous." The inspector had asked for half a pound of shilling butter, and did not in fact actually see the notice. The King's Bench Division held that, assuming that only one kind of butter was sold in the shop, the seller was protected by the notice and the sale was not to the prejudice of the purchaser. The sale of butter of this description is now regulated by ss. 4 (2) and 9 of the Act of 1907, *post*, pp. 79, 1831. A further point was raised in the case, which is dealt with in the notes to s. 8, *infra*.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133; 18 T. L. R. 535, the facts were the same as in the last case, except that

the inspector had asked for " best fresh butter," and had not actually seen the notice, though he admitted that he could have done so if he had liked. The King's Bench Division considered that the fact that best fresh butter was asked for was sufficient to distinguish the case from *Pearks* v. *Houghton*, and expressed an opinion that under the circumstances the sale would be to the prejudice of the purchaser, unless it could be proved that he actually saw the notice. The actual decision, however, was in favour of the defendants upon another point. See p. 37, *post*.

In *Dearden* v. *Whiteley* (1916), 80 J. P. 215 ; 85 L. J. K. B. 1420 ; 114 L. T. 702 ; 32 T. L. R. 260 ; 25 Cox C. C. 356 ; 14 L. G. R. 502, milk was sold from a can labelled :—" Under the Food and Drugs Act, 1893 " (*sic*), " all milk sold from this can is more or less diluted, and is sold as such. No standard guaranteed." The milk contained 18·5 per cent. of added water and only 2·58 per cent. of fat. It was held that no offence had been committed ; but the case turned upon special facts, and SANKEY, J., in his judgment, said that it had no general application.

Of course the notice must be clear and unequivocal. In *Collett* v. *Walker* (1895), 59 J. P. 600 ; 64 L. J. M. C. 267, a purchaser, on entering a shop and asking for some cheese, was supplied with a mixture which was composed of skimmed milk and beef fat, the bulk of the butter fat which is contained in cheese made from " whole " milk having been abstracted. Attached to the bulk of the substance from which the purchaser's portion was taken was a label containing the words " Valleyfield finest Oleine cheese," the words " finest Oleine " being in smaller type than the others. No notice of admixture by a label on or with the article was given to the purchaser, so as to give the seller a defence under s. 8, *post*. The purchaser did not notice the word " oleine " on the label, and said that if he had he would not have known what it meant :—*Held*, by GRANTHAM and LAWRANCE, JJ., that the appellant was rightly convicted of an offence under s. 6. See also *Dawes* v. *Wilkinson*, *ante*, p. 15. And in *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511 ; 8 L. G. R. 5, an inspector asked for coffee and was given a mixture containing 74 per cent. of chicory in a wrapper labelled " Coffee Mixture," with the words " Sold as a mixture of coffee and chicory " in very small print. It was

held that the defendant had been rightly convicted, and that the words "Coffee Mixture" would not necessarily lead a purchaser to suspect adulteration.

The same principle is illustrated in two Scotch cases. In *Souter* v. *Lean* (1903), 6 Fraser (J. C.) 20; 4 Adam, 280; 41 Sc. L. R. 192, a purchaser asked for "sweet milk," and was given a mixture of sweet milk and skim milk with 2·63 per cent. of fat, contained in a can embossed with the words "not guaranteed 3 per cent." The Court of Justiciary (*dissentiente* Lord Moncreiff) held that he had not got what he asked for, and that the vendor was not protected by the words on the can. And in *Wilson and McPhee* v. *Wilson*, (1903), 68 J. P. 175; 6 Fraser (J.C.) 10; 4 Adam, 310; 41 Sc. L. R. 195, a purchaser who asked for a bottle of brandy was given one labelled "Old Brandy, Tricoche & Co., Cognac," and containing 65 per cent. of spirit other than brandy. The Court of Justiciary (*dissentiente* the Lord Justice Clerk) held that the vendor was not protected.

A false representation as to the nature, substance and quality of the article demanded made by the seller prior to the sale, does not constitute an offence under s. 6, provided that the true nature, etc., is disclosed at the time of sale. In *Kirk* v. *Coates* (1885), 16 Q. B. D. 49; 50 J. P. 148; 55 L. J. M. C. 182; 54 L. T. 178; 34 W. R. 295, the question was whether a milkman was guilty of an offence under this section who stated to an officer that some cans contained new milk, but afterwards, on the officer intimating that he would have some, declared that it was old milk and not new. The magistrates decided that this was not a sale of new but of old milk, and that the defendant was therefore not liable under s. 6. The court upheld the decision of the magistrates. *Frew* v. *Gunning* (1901), 3 Fraser (J.C.) 51; 3 Adam, 339; 38 Sc. L. R. 555, was a similar case. There, a milk seller on his rounds ran short of milk, and bought a further supply from a dairyman. An inspector asked him for some "sweet milk." He was going to supply him from what was left of his own milk, but the inspector insisted upon being supplied from the can containing the purchased milk. He told the inspector before purchase that it was not his own milk, and warned him that it might or might not prove to be sweet milk. The milk turned out to be adulterated. The sheriff substitute acquitted and the Court of Justiciary held that

the acquittal was right. See also *Sandys* v. *Jackson*, *post*, p. 115.

If a false representation is in fact made at the time of the sale, an offence is committed, even though the purchaser must have known from the price paid that the representation was false. In *Heywood* v. *Whitehead* (1898), 76 L. T. 781, a milkman sold a pint of milk for a penny as new milk, though it was in fact skim milk. One of the magistrates thought that the inspector must have known from the price that the milk was not new milk, and that, therefore, no offence had been committed; but the court held that the milkman ought to have been convicted. And in *Keenan* v. *Costelloe* (1910), 44 Ir. L. T. 218, where a farmer had a contract with a creamery to supply milk for the purpose of butter making and the price was to vary according to the amount of butter fat, it was held an offence to supply under the contract milk containing added water. See also *Fecitt* v. *Walsh*, *post*, p. 43.

In *Bundy* v. *Lewis* (1908), 72 J. P. 489; 99 L. T. 833; 7 L. G. R. 55, an inspector asked for "paregoric," and was given a bottle labelled "Paregoric substitute," but wrapped in an opaque wrapper. The substance contained no opium, an essential ingredient according to the British Pharmacopœia. The assistant who served him, being unqualified, was not permitted by the Pharmacy Acts to sell opium, and the next day the employer wrote and apologised for the "technical error" of not informing the inspector at the time. The justices found that there was no prejudice to the purchaser, and the High Court held that there was evidence to support their finding. The judgment merely states that upon the special facts of the case there was no prejudice to the purchaser, but does not indicate upon what facts the court relied. It is submitted that the case, as reported, is valueless as a authority.

With regard to the second point, *i.e.*, that in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that the purchaser has suffered actual prejudice or damage, there was at one time a conflict of opinion.

In *Davidson* v. *M'Leod* (1877), 42 J. P. 43; 5 Rettie (J.C.) 1; 3 Coup. 511, the majority of the High Court of Justiciary in Scotland held that a purchaser for analysis under s. 13 of

the Act, buying samples for analysis, and not for consumption or at his own expense, could not be prejudiced by the purchase; but in *Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233; 43 J. P. 431; 48 L. J. M. C. 97; 40 L. T. 252; 27 W. R. 487, the Queen's Bench Division took the opposite view; and as the practical effect of the decision in *Davidson* v. *M'Leod* was to render s. 6 inoperative in Scotland, it was enacted by s. 2 of the Act of 1879, that it should be no defence to allege that the purchaser having bought only for analysis was not prejudiced. See *post*, p. 110.

As regards purchases for analysis, therefore, the point is now settled by s. 2 of the Act of 1879. But the judgments in *Hoyle* v. *Hitchman* cover the case of a private as well as an official purchaser; for Mellor, J., said: "If a purchaser, whoever he may be, . . . gets an article inferior to that which he demands and pays for, it seems to me that he is necessarily prejudiced within the meaning of the section. . . . The real offence is the fraudulent sale of an article adulterated so as to be of an inferior nature, etc., to that which is demanded and paid for. The necessity for the words 'to the prejudice of the purchaser,' is this: but for these words, various absurdities might arise. . . . The sale of an article of a superior nature or quality to that demanded would be an offence." And Lush, J., said: "What is the meaning of 'prejudice'? It cannot be confined to pecuniary prejudice, or prejudice arising from the consumption of unwholesome food. The prejudice is that which the ordinary customer suffers, viz., that which is suffered by anyone who pays for one thing, and gets another of inferior quality. . . . The words 'to the prejudice of the purchaser' are necessary, because if they had not been inserted, a person might have received a superior article to that which he demanded and paid for, and yet an offence would have been committed." The result is, that it is never necessary to prove any actual damage to the purchaser in order to obtain a conviction under this section, and that the words "to the prejudice of the purchaser" are only inserted, as Mellor, J., points out, to prevent such an absurdity as a prosecution for selling a better article than the one demanded.

Further, it was decided in *Pearks, Gunston and Tee, Limited* v. *Ward*, *supra*, p. 16, that it is enough to show that any ordinary purchaser would be prejudiced, even though the

person who actually bought the sample, owing to some special circumstance, has not been prejudiced at all.

(*d*) **"Nature, substance, and quality."**—In *Davidson* v. *M'Leod*, *ante*, the judges held that the words "*nature, substance, and quality*," could not be disjoined, and that the article sold must be different in all three respects from the article demanded, and that as the statute was intended to strike only at foreign admixtures, the very nature of the substance must be altered, or the offence contemplated could not be committed. By s. 2 of the Act of 1879 (see *post*, p. 110), it is provided that it shall not be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects.

"Quality" means commercial quality, and not "description" or "kind" (*Anness* v. *Grivell*, [1915] 3 K. B. 685; 79 J. P. 558; 85 L. J. K. B. 121; 113 L. T. 995; 25 Cox C. C. 190; 13 L. G. R. 1215). In that case the appellant sold as a "very good mixture of butter and margarine" a substance containing 80 per cent. of margarine, 15½ per cent. of water, salt, etc., and only 4½ per cent. of butter. As s. 8 of the Act of 1899 (*post*, p. 149) prohibits the sale of mixtures containing more than 10 per cent. of butter, the court felt compelled to hold that no offence had been committed; but intimated that but for the Act of 1899, the decision would have been the other way.

If the contract of sale stipulates for a specially high quality, it appears to be no offence in England to supply an article, otherwise unobjectionable, which is below the stipulated standard. See *Few* v. *Robinson*, [1921] 3 K. B. 504; 85 J. P. 257; 91 L. J. K. B. 42; 66 S. J. 60; 19 L. G. R. 708, where a contract for the sale of milk provided that it should contain not less than 3·5 per cent. of fat, but the milk supplied, though the unaltered product of a cow, contained only 2·9 per cent., and compare *Fecitt* v. *Walsh*, *post*, p. 43. In Ireland the question has been decided the other way in *Belfast Guardians* v. *Jones*, [1916] 2 I. R. 269, where the contract stipulated for not less than 3 per cent. of fat, and the sample only contained 2·74 per cent.

(*e*) **"The article demanded"** is the article known commercially under that name. In *Pashler* v. *Stevenitt* (1876),

41 J. P. 136 ; 35 L. T. 862, the appellant sold as gin a liquid composed of 26 per cent. of alcohol, 70 per cent. of water, and 4 per cent. of sugar. It was proved that gin was sold by retailers at a strength varying from proof to 20 degrees under proof. This liquid was 44 degrees under proof, and although the analyst said he should call it gin whose alcoholic strength was exceedingly low, the justices convicted the appellant. The conviction was upheld by the High Court, and CLEASBY, B., said : " This was not an article of the nature, substance, and quality of the article demanded by the purchaser. . . The justices have come to the conclusion that a mixture of alcohol and water so far as 44 per cent. below proof is not of the quality of gin as known commercially. . . . It is impossible for us to say that they were wrong." It should be noted that since the decision of this case the Licensing Act of 1921 (s. 10) has fixed the minimum strength for gin at 35 degrees under proof.

In *Sandys* v. *Rhodes* (1903), 67 J. P. 352, a grocer was prosecuted for selling a variety of tapioca as sago. The justices found that the public and the trade generally knew this substance as sago, and that there was no appreciable difference in cost between the two. The High Court held that no offence had been committed. The same decision was given in *Anderson* v. *Britcher* (1913), 78 J. P. 65 ; 110 L. T. 335 ; 30 T. L. R. 78 ; 12 L. G. R. 10, where cane sugar from Mauritius was sold as " Demerara sugar," but the magistrate found as a fact that Demerara sugar now means yellow crystallised cane sugar regardless of place of origin. The High Court compared " Demerara sugar " to " Cambridge sausages " and " Bath buns."

In *Hughes* v. *Traynor*, [1916] 2 I. R. 275 ; 50 Ir. L. T. 76, it was proved that for many years past in Ireland ground maize has been prepared for human consumption by removing the husk and the germ, thus reducing the percentage of oil from 4 per cent. to 1 per cent. This meal, which is sold as " white " meal, is more palatable and keeps better than the natural meal. The King's Bench Division in Ireland held that the prepared meal may be lawfully sold as " white meal " or " Indian meal."

To sell an article of food under a false name may also be a breach of the Merchandise Marks Acts.

If the article demanded has some recognised standard of

quality or composition, it is an offence against the section to sell an article which does not come up to that standard, and if there is no statutory standard, the justices must fix one for themselves upon the evidence (*Roberts* v. *Leeming* (1905) 69 J. P. 417 ; 3 L. G. R. 1031, and *Wilson and McPhee* v. *Wilson* (1903), 68 J. P. 175 ; 6 Fraser (J.C.) 10 ; 4 Adam, 310 ; 41 Sc. L. R. 195).

In *Rudd* v. *Skelton Co-operative Society, Limited* (1911), 75 J. P. 326 ; 104 L. T. 919 ; 20 Cox C. C. 469, " lardine " was sold containing 25 per cent. of water. Lardine is a new substitute for lard, containing cheap fats instead of pigs' fat ; about one-sixth of the samples of it contain more or less water, and the rest do not. The justices thought that as there was no statutory standard for this substance and no sufficient evidence as to what it really is, they must dismiss the summons, but Lord ALVERSTONE, C.J., and RIDLEY, J., (*dissentiente* BRAY, J.), sent the case back to them to find whether the sample was adulterated or not.

Milk.—It has for some time past been generally recognised by analysts that genuine milk contains at least 3 per cent. of milk fat and at least 8·5 per cent. of other solids, and this standard has to some extent been definitely established by the Sale of Milk Regulations, 1901 and 1912 (Appendix, *post*, p. 214), made under s. 4 of the Act of 1899, which provide that milk containing less than 3 per cent. of milk fat, or less than 8·5 per cent. of milk solids other than milk fat is to be presumed not to be genuine until the contrary is proved. A similar presumption is to arise in the case of skimmed or separated milk containing less than 8·7 per cent. of milk solids other than fat. It should be observed that these Regulations do not absolutely fix a standard of genuineness, but merely shift the burden of proof from the prosecution to the defendant in cases to which they apply. See the remarks on this subject in a circular letter of the Board of Agriculture, dated December 28th, 1901, in the Appendix, *post*, p. 264. The following cases show the view that has been taken in the courts upon this question from time to time.

In *Lane* v. *Collins* (1884), 14 Q. B. D. 193 ; 49 J. P. 89 ; 54 L. J. M. C. 76 ; 52 L. T. 257 ; 33 W. R. 365, a milk seller was prosecuted for selling skim milk as milk. The magistrates acquitted him on the ground that skim milk is a kind of milk, and MATHEW and DAY, JJ., held that the acquittal

was right. The argument was extremely short, no authorities being cited to the court, and the decision does not appear to have been followed in any subsequent case. In *Smithies* v. *Bridge*, *infra*, Lord ALVERSTONE, C.J., said that *Lane* v. *Collins* was decided on its own special facts, and that he did not know that he would have agreed with the decision. And in *Herrington* v. *Slater* (1920), 85 J. P. 83; 90 L. J. K. B. 265; 124 L. T. 272; 37 T. L. R. 51; 26 Cox C. C. 670; 18 L. G. R. 840, where under the name of "hot milk" a substance was sold containing only 2·25 per cent. of fat and 7·97 per cent. of non-fatty solids the magistrates dismissed the information on the authority of *Lane* v. *Collins*, but the court held that they ought to have convicted. It is suggested that *Lane* v. *Collins* cannot now be regarded as law; and the point is really covered by the Sale of Milk Regulations, *post*, p. 214.

In *Banks* v. *Wooler* (1900), 64 J. P. 245; 81 L. T. 785; 19 Cox C. C. 432, the defendant had sold milk which contained 3·55 per cent. of fat (more than the standard), and 7·46 per cent. of other solids (less than the standard), and the analyst certified that 10 per cent. of water had been added. The magistrates said that the milk was exceptionally good, and that the offence was trifling, and dismissed the case. CHANNELL and BUCKNILL, JJ., said that if the magistrates meant that the milk was exceptionally good after the adulteration they were justified in dealing with the case as they did. This does not mean that an offence had not been committed, but merely that it was of such a trifling nature as not to call for the infliction of a fine or costs. As to this point see also *Preston* v. *Redfern*, *post*, p. 33.

Knowles v. *Scott*, [1918] S. C. (J.) 32; 55 Sc. L. R. 167, a case in which a conviction for selling milk containing only 2·3 per cent. of fat was quashed by the Court of Justiciary, turned upon questions of Scotch criminal procedure and the wording of the case stated by the sheriff substitute. It was distinguished in *Penrice* v. *Brander* (1921), 58 Sc. L. R. 307, and is, it is submitted, of no value as an authority in England.

It would appear that at the present time it is no offence to sell milk which is below the standard, but the actual product of the cow, even if the deficiency is brought about by improper feeding or milking; but the decisions on this point have fluctuated from time to time. In *Smithies* v. *Bridge*,

[1902] 2 K. B. 13; 66 J. P. 740; 87 L. T. 167; 50 W. R. 686, a milk seller sold milk which was deficient in fat to the extent of 29·7 per cent. The milk was sold in the same state as when it came from the cow, and the deficiency arose from the fact that the cow had not been milked for sixteen hours, during which period much of the fat was absorbed. The magistrates convicted, and Lord ALVERSTONE, C.J., and CHANNELL, J. (*dissentiente* DARLING, J.), held that the conviction was right. The majority of the court expressed an opinion that genuine milk produced by a diseased or improperly treated cow ought not to be sold as milk. And in *Marshall* v. *Skeet* (1912), 77 J. P. 173; 108 L. T. 1001; 23 Cox C. C. 435; 29 T. L. R. 152; 11 L. G. R. 259, where the deficiency in fat was 26 per cent., the only other evidence was that another sample from the same milking was 1 per cent. above the standard, and a sample from another milking of the same cows 3 per cent. below it The justices expressed an opinion that the milk was as it came from the cows, and acquitted the defendant, but the High Court held that they ought to have convicted. But in *Wolfenden* v. *McCulloch* (1905), 69 J. P. 228; 92 L. T. 857; 20 Cox C. C. 864; 3 L. G. R. 561, where the deficiency was 6·25 per cent., the justices found that it arose from the cow not having been milked for fourteen hours, which was the usual practice in the district, but felt bound to convict on the authority of *Smithies* v. *Bridge*. The High Court held that the justices ought to have inquired whether the article sold was of the nature, substance, or quality of milk, and that under the circumstances there was no evidence upon which they could convict. *O'Driscoll* v. *Dolan* (1910), 45 Ir. L. T. 144, was a similar case. And in *Scott* v. *Jack*, [1912] S. C. (J.) 87; 49 Sc. L. R. 989, the Scotch court refused to follow *Smithies* v. *Bridge*.

In *Hunt* v. *Richardson*, [1916] 2 K. B. 446; 80 J. P. 305; 85 L. J. K. B. 1360; 115 L. T. 114; 32 T. L. R. 560; 25 Cox C. C. 441; 60 S. J. 588; 14 L. G. R. 854, there was a contract to supply "new milk each morning." The season was wet, the herbage was watery and the cows were fed on green maize and other soft foods. The result was that the milk only contained 2·73 per cent. of fat, although nothing was added to or subtracted from it. The court, by a majority of three judges to two, held that no offence had been com-

mitted, and approved *Wolfenden* v. *McCulloch* and *Scott* v. *Jack*, and adversely commented on *Smithies* v. *Bridge*. *Hunt* v. *Richardson* was reluctantly followed in *Grigg* v. *Smith* (1917), 82 J. P. 2 ; 87 L. J. K. B. 488 ; 117 L. T. 477 ; 33 T. L. R. 541 ; 61 S. J. 677 ; 26 Cox C. C. 26 ; 15 L. G. R. 769, where a farmer kept one cow which had a calf. He partly milked the cow and sold the product to his customers, but kept the last of the milk, which contained most of the cream, for the calf. The milk sold contained only 2·6 per cent. of fat. It was also followed in *Williams* v. *Rees* (1917), 82 J. P. 97 ; 87 L. J. K. B. 639 ; 118 L. T. 356 ; 26 Cox C. C. 173 ; 16 L. G. R. 159, where the milk sold was deficient in fat to the extent of 28 per cent., and the magistrate found that it was not of merchantable quality ; the reason of the deficiency being that the cow had had no food except some exceptionally poor grass.

And the same principle seems to apply to dirt introduced into milk in the course of milking. In *Kenny* v. *Cox* (1920), 85 J. P. 70 ; 89 L. J. K. B. 1258 ; 124 L. T. 221 ; 37 T. L. R. 49 ; 26 Cox C. C. 659 ; 18 L. G. R. 844, the sample was richer than the average, but included a small quantity of dirty *débris*, including particles of dung " likely to affect the sample detrimentally as an article of food." The justices dismissed the information, and the court upheld their decision and intimated that a conviction would have been a straining of the law.

But, if milk contains less than the proportions of fat and other solids prescribed by the regulations, the presumption that it is adulterated can only be rebutted by definite evidence that nothing has been added to, or subtracted from it (*Kings* v. *Merris*, [1920] 3 K. B. 566 ; 85 J. P. 68 ; 90 L. J. K. B. 161 ; 124 L. T. 150 ; 26 Cox C. C. 649 ; 18 L. G. R. 775) ; and that evidence should cover the whole period from the milking to the delivery to the purchaser (*Bowen* v. *Jones* (1917), 81 J. P. 178 ; 86 L. J. K. B. 802 ; 117 L. T. 125 ; 25 Cox C. C. 757).

In order to rebut a possible defence that milk was sold as it came from the cow, the prosecution may give evidence that a second sample taken on the following day was above the average. But it is a condition precedent to the admissibility of such evidence that the second sample should be from the same cow or cows, milked in the same way, at the

same milking (*i.e.*, morning or evening) (*Wilkinson* v. *Clark*, [1916] 2 K. B. 636; 80 J. P. 334; 85 L. J. K. B. 1641; 115 L. T. 385; 32 T. L. R. 681; 25 Cox C. C. 519; 14 L. G. R. 849); and a second sample taken three days after the first may be admissible (*Smith* v. *Philpott*, [1920] 1 K. B. 222; 84 J. P. 5; 89 L. J. K. B. 296; 122 L. T. 273; 26 Cox C. C. 541; 17 L. G. R. 781). But if the second sample is so long after the first that it would be absurd to attach any weight to it, it ought to be excluded (*ibid.*). See also *Marshall* v. *Skeet*, *ante*, p. 26.

By ss. 4 and 5 of the Milk and Dairies (Amendment) Act, 1922, *post*, p. 193, restrictions are placed upon the sale of milk which is unwholesome, though not actually adulterated.

Butter.—It has long been recognised by analysts that properly made butter ought not to contain more than 16 per cent. of water; and by the Sale of Butter Regulations, 1902 (Appendix, p. 217), it is provided that butter containing more than this percentage of water is not to be regarded as genuine until the contrary be proved. This standard is also recognised by ss. 4 and 5 of the Act of 1907, *post*. In *Pearks, Gunston and Tee, Limited* v. *Knight* and *Same* v. *Van Tromp*, [1901] 2 K. B. 825; 65 J. P. 822; 70 L. J. K. B. 1002; 85 L. T. 379; 50 W. R. 104; 20 Cox C. C. 46, the appellants had sold as butter a mixture of butter and milk which, by reason of such admixture, contained 22·5 per cent. of water. The magistrate held that the mixture was not butter, and WILLS and KENNEDY, JJ., approved his decision, apparently rather upon the ground that butter and milk is not butter than on account of the excess of water.

It is none the less "butter" because it contains salt or a preservative. See s. 3 of the Margarine Act, 1887, *post*, p. 122, and the case of *Roose* v. *Perry & Co.* (1900), 44 S. J. 503.

But as to the use of preservatives in butter, see ss. 5 and 7 of the Act of 1907, *post*, pp. 179, 182.

Restrictions are placed upon the manufacture and sale of "milk-blended butter" by the Act of 1907, *post*.

Margarine.—Notwithstanding the technical meaning given to the term "margarine" in the Sale of Food and Drugs Acts (see s. 13 of the Act of 1907, *post*, p. 187), there

is a definite substance sold commercially under that name, and the purchaser who asks for it is entitled to get it pure (*Burton* v. *Mattinson* (1902), 66 J. P. 628; 86 L. T. 770; *Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031). It must not contain more than 16 per cent. of water (s. 4 of the Act of 1907, *post*, p. 178).

Drugs.—The question often arises whether the British Pharmacopœia has fixed an absolute standard for drugs. In *White* v. *Bywater* (1887), 19 Q. B. D. 582; 51 J. P. 821; 36 W. R. 280, a chemist sold some tincture of opium which contained less alcohol and opium than that prepared according to the standard of the British Pharmacopœia:—*Held*, by Lord COLERIDGE, C.J., and A. L. SMITH, J., that he ought to have been convicted of an offence under this section, although the purchaser had not asked for tincture of opium prepared according to the standard of the British Pharmacopœia; and A. L. SMITH, J., said: "Tincture of opium must mean the article known in commerce as tincture of opium. The thing supplied was not tincture of opium of commerce, but an inferior article."

But the British Pharmacopœia must state in terms or by necessary inference the composition of the article. In *Hudson* v. *Bridge* (1903), 67 J. P. 186; 19 T. L. R. 369, the article sold was vinegar of squills, and it contained only 2·5 per cent. of acetic acid. The British Pharmacopœia, 1898, does not state in terms what the composition of vinegar of squills is when made, but contains a recipe for making it in a particular way from certain ingredients in certain proportions, the result of which would be that the article, when freshly made, would contain 4·27 per cent. of acetic acid; this amount, however, continuously decreases, even with careful storing, owing to internal chemical changes. The King's Bench Division held that there is no standard for the drug.

There are several cases in which the Pharmacopœia gives only the formula for manufacture, and where the product is liable to evaporation or chemical change; but in others tests for the finished product are given, as well as the formula, and it may well be that different considerations might apply to these.

An attempt is sometimes made to prove that there is a commercial standard for the drug other than that of the

British Pharmacopœia. In *Dickins* v. *Randerson*, [1901] 1 K. B. 437 ; 65 J. P. 262 ; 70 L. J. K. B. 344 ; 84 L. T. 204 ; 19 Cox C. C. 643, a chemist sold mercury ointment containing 12·5 per cent. of mercury. According to the British Pharmacopœia it should contain 48·5 per cent. The chemist brought a quantity of evidence to show that it is the universal practice among druggists to supply the weaker ointment unless the stronger one is prescribed or specially asked for. The justices convicted him in spite of this evidence, and BRUCE and PHILLIMORE, JJ., held that the conviction was right.

In *Boots' Cash Chemists* (*Southern*), *Limited* v. *Cowling* (1903), 67 J. P. 195 ; 19 T. L. R. 370, a chemist sold liniment of soap made with methylated spirit, and not with alcohol as prescribed by the British Pharmacopœia. He tendered evidence to show that there is a commercial standard for the drug, different from that of the British Pharmacopœia, but the evidence was rejected by the magistrate on the authority of *Dickins* v. *Randerson, supra.* Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the evidence ought to have been received, but expressly refrained from giving any opinion as to what its value might be, and sent the case back for rehearing. The effect of these two cases seems to be that the standard of the British Pharmacopœia is not conclusive, but that very strong evidence is necessary to displace it.

On the other hand, if the article demanded has no recognised standard of quality or composition, *e.g.*, cream, no offence is committed by selling an article of low quality but genuine. In the case of *Hoyle* v. *Hitchman, ante*, LUSH, J., referred to *Davidson* v. *M'Leod*, and while dissenting from the views of some of the judges expressed therein, said : " The decision itself seems to me to be correct. The article there demanded and supplied was cream. It was admitted that it contained no foreign admixture or adulteration, but it was cream of an inferior quality to that ordinarily sold in Glasgow. Cream is not an article having any standard of quality. It varies with the character of the cows from which the milk comes and the food on which they are fed. This was genuine cream though of inferior quality. It appears to me that the sale in such a case was not an offence within the Act at all. In the present case the article demanded was

milk; that supplied was milk and water, It was an adulterated article."

A similar decision was given in the Scotch case of *Morton* v. *Green* (1881), 8 Rettie (J.C.) 36; 4 Coup. 437, where it was held that the sale of an inferior, though pure, quality of cream at a low price was not an offence within the statute.

In *Smith* v. *Wisden* (1901), 66 J. P. 150; 85 L. T. 760, marmalade was sold which contained 13 per cent. of glucose instead of cane or beet sugar. Evidence was given that for many years glucose had been used by some marmalade manufacturers, but not by all, and that its use had a tendency to prevent mildew; but the justices convicted the seller. The King's Bench Division held that there was no evidence to show that this substance was not "marmalade," and they quashed the conviction. Similarly, in the Scotch case of *Wilson* v. *McCutcheon* (1902), 4 Adam, 34; 40 Sc. L. R. 31, the complaint stated that the defendant had sold marmalade which was not of the nature, substance, and quality demanded, in respect that it contained 14 per cent. of starch glucose. The Court of Justiciary held that there is no recognised standard for marmalade, and that the complaint disclosed no offence.

An accidental introduction of a small quantity of deleterious matter into an article sold for food does not of necessity make it different in nature, substance, and quality from the article demanded (*per* Lord ALVERSTONE, C.J., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290; 65 J. P. 646; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684). As to this, see also sub-s. (4) of this section, *ante*, p. 9, and *Kenny* v. *Cox*, *ante*, p. 27.

It should be noted that if an article sold is altogether different from that which was demanded by the purchaser, it is an offence under this section. See *Knight* v. *Bowers* (1885), 14 Q. B. D. 845; 49 J. P. 614; 54 L. J. M. C. 108; 53 L. T. 234; 33 W. R. 613; 15 Cox C. C. 728, where saffron was asked for and savin supplied. If this were not so, many offenders would escape; as, for instance, those who sell lard for butter, or chicory for coffee.

The abstraction of a constituent from any article of food is provided for by s. 9, *post*, p. 40.

The question whether the article sold is the article demanded by the purchaser is one of fact for the justices

(*Webb* v. *Knight* (1877), 2 Q. B. D. 530; 41 J. P. 726; 46 L. J. M. C. 264; 36 L. T. 791; 26 W. R. 14). See also the judgments of GROVE, J., in *Pashler* v. *Stevenitt*, *supra*, and Lord ALVERSTONE, C.J., in *Goulder* v. *Rook*, *supra*, and *Friend* v. *Mapp* (1904), 68 J. P. 589; 2 L. G. R. 1317.

In determining the above question, the justices are entitled to use any special knowledge that they may possess as to what is known commercially under any particular name, even though no evidence may be forthcoming upon the point. See *R.* v. *Field* (1895), 64 L. J. M. C. 158, where a Gosport grocer had sold a packet of cocoa containing 80 per cent. of starch and sugar. The justices, who were all retired naval officers, had a large experience of cocoa, which forms one of the regular rations on His Majesty's ships. Acting on the knowledge so acquired, and without hearing any evidence as to the composition of cocoa as sold commercially, they came to the conclusion that the starch and sugar had not been added fraudulently, notwithstanding the fact that the analyst had certified that the cocoa was adulterated, and being of opinion that the offence, if any, was quite trifling, they discharged the accused under the provisions of s. 16 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Their action was approved by the court.

The principle of the above case was followed in *Shortt* v. *Robinson* (1899), 68 L. J. Q. B. 352; 63 J. P. 295; 80 L. T. 261; 19 Cox C. C. 243, where the justices acted upon knowledge derived in the course of the case from a document which would not have been admissible as evidence in a court of law. The article in respect of which the prosecution was instituted was caper tea, and the analysis showed that the sample in question was adulterated with 3·5 per cent. of mineral matter. In the cross-examination of the analyst, a report of the authorities at Somerset House on the subject of caper tea was put to him with a view to showing that extraneous matter is necessarily present in caper tea, owing to its method of production. The justices rightly refused to admit the report as evidence, but nevertheless read and acted upon it, acquitting the defendant, on the ground that the presence of 3·5 per cent. of extraneous matter in caper tea did not constitute an adulteration. The High Court (LAWRANCE and CHANNELL, JJ.) declined to interfere with their decision.

In *Preston* v. *Redfern* (1912), 76 J. P. 359 ; 107 L. T. 410 ; 23 Cox C. C. 166 ; 28 T. L. R. 435 ; 10 L. G. R. 717, a sample of milk contained 12 per cent. of added water, but the churn was not stirred before taking it. No evidence was given for the defendant. The justices were of opinion from their own knowledge, that the sample did not fairly represent the bulk, and that the deficiency of solids might be due to other causes, so they dismissed the summons on the ground that the milk was of good quality and the offence, if any, trivial. The High Court held that they were not entitled to use their own knowledge to say that no offence had been committed, but that they might do so to say that the milk was of good quality and the offence trivial ; that on the facts they had grounds for coming to the latter conclusion, but that the case must not be taken as a precedent.

(*f*) **The Purchaser.**—In the case of drugs supplied under the provisions of the National Insurance Act it is doubtful whether the " purchaser " is the patient who receives the drug or the local insurance committee who pay for it.

(*g*) **Penalty.**—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899 (p. 155), which also provides for the imprisonment of the offender under certain circumstances.

By s. 14 of the Licensing Act, 1874, it is provided, that all convictions for selling adulterated drinks " shall be entered in the proper register of licences."

(*h*) **Burden of Proof.**—It is for the defendant to prove that he is protected by any of these exceptions. See s. 24, *post*, p. 78.

(*i*) **Preservatives.**—As to the use of these, see s. 7 of the Act of 1907 (*post*, p. 182).

Spirits.—With respect to the addition of water to spirits, see s. 10 of the Licensing Act, 1921 (*post*, p. 188).

(*k*) **Proprietary Medicines.**—Proprietary medicines are by this sub-section excluded from the operation of the Sale of Food and Drugs Acts. In the case of the adulteration of a proprietary medicine, therefore, the purchaser would be

driven to his common law remedy. The seller might also, in certain circumstances, be liable to a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2.

(*l*) **"Compounded as in this Act mentioned."**—This sub-section is practically inoperative. In *Beardsley* v. *Walton & Co.*, [1900] 2 Q. B. 1; 64 J. P. 436; 69 L. J. Q. B. 344; 82 L. T. 119; 19 Cox C. C. 447, CHANNELL, J., said: "There is nothing in the Act as to how drugs are to be compounded. The only way in which this omission can be accounted for is that the Bill as originally drafted contained a definition of the expression 'compounded drugs' which was dropped out of it during its progress through Parliament, while the expression 'drug compounded as in this Act mentioned' was left in by an oversight. The result is that s. 6 (3) has practically no operation."

(*m*) **"Unavoidably mixed."**—The Act implies reasonable care. Where the foreign ingredient is present in larger proportion than is ordinarily found in a commercial article, the practice is to regard the excessive quantity present as an adulteration; for instance, in the case of pepper, where sand is in excess. In *Shortt* v. *Robinson*, *ante*, p. 32, it was held that owing to the method in which caper tea is produced the presence of 3·5 per cent. of mineral matter in the tea did not constitute an adulteration, and that the seller was protected by this sub-section.

In *Warnock* v. *Johnstone* (1881), 8 Rettie (J.C.), 55; 4 Coup. 509, the defendant was prosecuted for selling buttermilk adulterated with 30 per cent. of added water. It was proved that the addition of some water was necessary in the process of manufacture, but that the quantity varied, and depended for the most part upon the state of the temperature. The High Court of Justiciary in Scotland held that the defendant was excused under sub-s. (4). This percentage seems extremely high. See the chemical note on the adulteration of milk, *post*, pp. 329, 330.

In *Bosomworth* v. *Bridge* (1892), 36 Sol. J. 594, a butterman was convicted of selling butter containing 21½ per cent. of water. In stating a case for the opinion of the High Court the magistrates said that evidence had been given on behalf of the defendant to show that the water had been unavoidably mixed in the course of preparation, and also

that it had been added in order to make the butter in a fit state for carriage, but they did not say whether they believed the evidence or not. WRIGHT and COLLINS, JJ., sent the case back for them to find the facts definitely on this question. Compare *Pearks* v. *Knight*, *ante*, p. 28.

See also the remarks of Lord ALVERSTONE, C.J., at the end of his judgment in *Goulder* v. *Rook*, cited *ante*, p. 31.

7. *Compound Articles of Food and Compounded Drugs.*—No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser (*a*), under a penalty (*b*) not exceeding twenty pounds.

This section would seem to be intended to apply to such foods as are universally known and sold as compound articles, the composition of which is distinctly recognised or indicated. In the case of "drugs," it applies more particularly to "prescriptions" or "recipes," medical or otherwise, and it would be an offence under the section when they are not compounded in strict accordance with them. Any offence under this section is also punishable under s. 6, *ante*. See *Beardsley* v. *Walton*, [1900] 2 Q. B. 1; 64 J. P. 436; 69 L. J. Q. B. 344; 82 L. T. 119; 19 Cox C. C. 447; and *Dickins* v. *Randerson*, [1901] 1 K. B. 437; 65 J. P. 262; 70 L. J. K. B. 344; 84 L. T. 204; 19 Cox C. C. 643. This accounts, no doubt, for the small number of prosecutions which have taken place under s. 7.

(*a*) **The Purchaser.**—In the case of prescriptions made up under the provisions of the National Insurance Act it is doubtful whether the "purchaser" is the patient who receives the medicine or the local insurance committee who pay for it.

(*b*) **Penalty.**—See note (*g*) to s. 6, *supra*, p. 33.

8. *Protection from Offences by giving Label.*—Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient

not injurious to health, and not intended fraudulently (*a*) to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice (*b*), by a label distinctly and legibly written or printed (*c*) on or with the article or drug, to the effect (*d*) that the same is mixed.

(*a*) **"Fraudulently."**—When a mixture is sold in a labelled package, the justices must determine whether the admixture has been made for any of the fraudulent purposes mentioned in the section. This is, of course, purely a question of fact, as will be seen from the following cases. It is no defence to plead that the article was sold in the same state as when it was received from the manufacturer.

In *Liddiard* v. *Reece* (1880), 44 J. P. 233, when the inspector asked for coffee he received a packet with a label describing it as a mixture of coffee and chicory. The analyst's certificate showed that it was composed of 60 per cent. of chicory and 40 per cent. of coffee. The magistrates decided that the seller was not protected by the label, as the 60 per cent. of chicory was used for the purpose of fraudulently increasing the bulk or weight of the coffee, and convicted the defendant. This conviction was upheld in the High Court. *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511; 8 L. G. R. 5, was a similar case.

In *Horder* v. *Meddings* (1880), 44 J. P. 234, a mixture was sold under similar circumstances to those in *Liddiard* v. *Reece*, *supra*, except that the mixture contained 85 per cent. of chicory instead of 60. The defendant, besides pleading the label in defence, urged that he sold the article in the condition in which he received it from the manufacturer. The magistrate found that the chicory had been added fraudulently. This decision was upheld by the High Court, and LUSH, J., said that the magistrate was bound to find whether the chicory was used fraudulently to increase the bulk; that if it was so used he ought to convict, notwithstanding the label; and that it was no defence for the vendor to say that he sold it just as he had received it from the manufacturers.

In *Otter* v. *Edgley* (1893), 57 J. P. 457, the facts were somewhat different. An inspector had entered a shop and asked for "French coffee," and had been supplied with a mixture containing 60 per cent. of chicory and 40 per cent. of coffee. Upon the tin was a label stating that it was a mixture, and his attention had been called to the label. There was also evidence that "French coffee" was a well-known commodity, and that the description was not misleading; but the magistrates had convicted the seller on the ground that the chicory had been added fraudulently to increase the bulk, etc. The High Court, however, held that there had been no evidence of fraud, that the seller was protected by the label, and that the conviction was wrong.

A similar decision was given in *Jones* v. *Jones* (1894), 58 J. P. 653. The mixture sold in that case consisted of 30 per cent. of cocoa and 70 per cent. of starch and sugar, and it was held that a label stating it to be a mixture, in the absence of any evidence of fraud (nearly all cocoas, it will be remembered, are mixtures), was a sufficient protection to the seller.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133; 18 T. L. R. 535, the purchaser asked for "best fresh butter," and was supplied with "Pearks' butter," *i.e.*, a mixture of butter and milk, containing over 20 per cent. of water. The butter was handed to him in a wrapper on which was a printed label in the same terms as that in *Pearks* v. *Houghton*, *post*, p. 38. The justices considered that although the butter was not "best fresh butter," yet the defendants were protected by the label, and the King's Bench Division held that they were right. The sale of such butter is now regulated by the Act of 1907, *post*.

(*b*) **Notice.**—A question sometimes arises as to whether the attention of the purchaser need be called to the notice on the label or not. In *Jones* v. *Jones*, *supra*, the tin of cocoa in question with the label upon it, was wrapped in a sheet of opaque white paper before delivery to the purchaser, who had no opportunity of seeing the label, nor was his attention called to it. The cocoa was sold at 8*d*. per pound, the price of the best pure cocoa being 2*s*. 8*d*. per pound. MATHEW and CAVE, JJ., held that sufficient notice had been given, and MATHEW, J., said: "There was a label which distinctly stated that the article was mixed. It has been seriously

contended that it was no label, because it was wrapped up in opaque paper at the time of being sold. The paper covering was merely the usual way of giving the article to a purchaser. The article has been sold so mixed for thirty years, and must have been well known to purchasers. To say that there was no label because of it being wrapped up is an absurdity." This case was approved and followed in *Clifford* v. *Battley*, [1915] 1 K. B. 531; 79 J. P. 180; 84 L. J. K. B. 615; 112 L. T. 765; 31 T. L. R. 117; 13 L. G. R. 505, where an inspector bought from a grocer small quantities of coffee, tea, rice, pepper and moist and lump sugar. The grocer packed these in six small parcels, and then wrapped the whole lot up in a sheet of brown paper with no notice on it. This was done without fraud and merely for convenience of carriage. On opening the big parcel it was seen that the wrapper on the parcel of coffee stated that it was sold as a mixture of coffee and chicory, as in fact it was. The court held that no offence had been committed.

In *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889; 66 J. P. 422; 71 L. J. K. B. 385; 86 L. T. 325; 50 W. R. 605, the appellants sold butter blended with milk in such a way as to cause the butter to contain an excess of water to the extent of 7·8 per cent. They sold it as butter in a wrapper on which was a label in the following terms: "Pearks' butter. This is choicest butter, blended with pure English full cream milk, by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour which has made Pearks' butter so famous. This package weighs half pound including wrapper." The printed wrapper was in turn enclosed in a second wrapper which effectually concealed the printed matter. Lord Alverstone, C.J., and Darling and Channell, JJ., expressed an opinion that the appellants would not be entitled to rely upon the provisions of s. 8, owing to the presence of the opaque wrapper; but this opinion was disapproved in *Clifford* v. *Battley*, *supra*. For the point upon which the decision of the case really turned see note (*c*) to s. 6, *ante*, p. 17.

In *Batchelour* v. *Gee*, [1914] 3 K. B. 242; 78 J. P. 362; 111 L. T. 256; 30 T. L. R. 506, a pot of cream containing boric acid with a proper label was given to the purchaser in a paper bag so that he did not, and could not, see the label, and

his attention was not called to it. It was held that the seller had not in fact given notice to the purchaser of the presence of boric acid, and that he was not protected by the label; but this case was disapproved and not followed in *Clifford* v. *Battley*, *supra*. See also *World's Tea Co.* v. *Gardner* and *Toler* v. *Bischop*, *post*, p. 128.

Other Means of Giving Notice.—It should, of course, be borne in mind that the delivery of a label in accordance with the requirements of s. 8 is not the only means available for giving the purchaser notice of what he is purchasing. In *Sandys* v. *Small*, *ante*, p. 14, COCKBURN, L.C.J., said in his judgment: "Section 8 provides a mode by which the seller may insure himself against the possibility of the enactment operating to his prejudice. If he delivers the label as provided by that section, he protects himself against the possibility of being charged with an offence under the Act. If he does not, then I think it is incumbent on him to prove that by some other means the purchaser had notice of what he was purchasing. . . . I do not think the statute means that the affixing of the label is to be the only mode of bringing knowledge home to the purchaser. I think if a man puts up in a conspicuous position a notice in large letters, as was done here, and it is clear that it must have come under the observation of the customer, that the 6th section would not apply." This proposition is well illustrated by *Gage* v. *Elsey*, and the other cases collected under note (*c*) to s. 6, *ante*, p. 14. Care should also be taken not to confuse the two kinds of defence. The label supplied on or with the article sold constitutes a defence under s. 8, but where the purchaser's attention is called to the true nature of the article sold by a notice either given verbally or displayed upon the premises, the seller's ground of defence is that the sale was not to the prejudice of the purchaser within the meaning of s. 6. In *Wadd* v. *Brayly* (1887), 51 J. P. 423, which was an appeal to quarter sessions, a grocer was convicted under s. 6 of selling butterine as butter. He sold both butter and butterine, and it was his custom, when exposing the two for sale, to distinguish them by placards placed in his shop window. But on the particular occasion in question the placards had been removed in order that the window might be cleaned. The learned recorder who tried the case is reported to have said that had it not been for this the grocer would have had a

defence under s. 8, but if he did say so, he was wrong to this extent, that although the grocer would have undoubtedly had a defence, it would not have been a defence under s. 8, but a defence that the purchaser was not prejudiced within the meaning of s. 6.

(*c*) **"Legibly Written or Printed."**—An interpretation of these words is given in s. 12 of the Act of 1899, *post*, p. 153.

(*d*) **"To the Effect that the Same is Mixed."**—These words in themselves make it plain that it is not necessary to state with what, or to what extent, the article has been mixed; only a general statement that it is a mixture need be given; see *Otter* v. *Edgley* and *Jones* v. *Jones* in note (*a*), *supra*. Similarly in *Pope* v. *Tearle* (1874), L. R. 9 C. P. 499; 37 J. P. 485; 43 L. J. M. C. 129; 30 L. T. 789; 22 W. R. 950, a case decided under s. 3 of the repealed Act of 1872, which made it an offence to sell certain mixed articles of food without "declaring such admixture" to the purchaser, a grocer had sold mustard mixed with flour and turmeric. There was a label on the canister "Warranted free from injurious admixture, but not sold as pure mustard." The court (Lord COLERIDGE, C.J., and BRETT and GROVE, JJ.) held that the label was sufficient, and that the grocer was not bound to declare "the nature or quantities of the materials admixed." But in *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511; 8 L. G. R. 5, some of the judges thought that the words "Coffee Mixture" were not a sufficient disclosure of the fact that the coffee contained 74 per cent. of chicory.

9. *Abstraction of Part of an Article of Food before Sale.*—No person shall, with the intent that the same may be sold in its altered state without notice, abstract (*a*) from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell (*b*) any article so altered without making disclosure (*c*) of the alteration, under a penalty in each case not exceeding twenty pounds (*d*).

This section applies to the abstraction of an important ingredient of any commodity; but it was specially intended

to make the removal of cream from milk a punishable offence. Unlike s. 6, *ante*, it applies to the person who actually alters the article, as well as to the person who sells it when altered. It should further be noticed that s. 8 does not apply to this section, and that therefore the giving of a label is no defence to a prosecution under it, unless the label sufficiently discloses the nature of the alteration, and unless the purchaser's attention is called to it at the time of the sale. See notes (*b*) and (*c*), *infra*. For the question whether a warranty affords a defence to a prosecution under this section see note (*b*) to s. 25, *post*, p. 79.

(*a*) **"Abstract."**—By the Sale of Milk Regulations, 1901 and 1912, *post*, p. 214, if a sample of milk contains less than 3 per cent. of milk fat, or 8·5 per cent. of non-fatty solids, or a sample of skimmed or separated milk contains less than 8·7 per cent. of milk solids other than fat, it is to be presumed that abstraction has taken place or that water has been added.

(*b*) **Guilty Knowledge.**—If at the time of sale the vendor gives due notice to the purchaser that the cream has been abstracted, he is not liable. But if no such notice has been given, it is no defence to a prosecution under this section for him to plead that he had no knowledge of the alteration at the time of the sale—unless, of course, he can produce a written warranty in accordance with the provisions of s. 25, *post*. This point has been authoritatively settled by *Pain* v. *Boughtwood* (1890), 24 Q. B. D. 353; 54 J. P. 469; 59 L. J. M. C. 45; 62 L. T. 284; 38 W. R. 428; 16 Cox C. C. 747, a case stated by one of the metropolitan police magistrates, where the respondent, a milk seller, had sold milk from which 28 per cent. of the original fat had been abstracted without making disclosure of the alteration. No evidence was given that the person selling the milk had knowledge of the alteration, and the respondent gave evidence that he had no such knowledge. His daughter, who sold the milk, also denied all knowledge of the alteration. The magistrate, for this reason, had dismissed the summons; but the court held that he was wrong, and that a person selling the altered article could be convicted under s. 9, although at the time he sold it he did not know of the alteration. In the course of his judgment GRANTHAM, J., said: " . . . by s. 25 the seller is

given a power of protecting and exonerating himself by obtaining a written warranty from the person who has supplied the article to him. In the present case, the respondent ought to have provided himself with a written warranty, and then he could have handed it over to the inspector, who could thereupon have proceeded against the person who had actually committed the fraud. If that course is not taken, the legislature assumes that the seller has been a party to what has been done. Every precaution is taken in the statute to enable a person honestly selling the article without knowledge to defend himself against a charge made under s. 9." Charles, J., added that *Betts* v. *Armstead*, *ante*, p. 10, was a judicial exposition of the meaning of the Act, and must be followed.

This decision was followed in *Dyke* v. *Gower*, [1892] 1 Q. B. 220; 56 J. P. 168; 61 L. J. M. C. 70; 65 L. T. 760; 17 Cox C. C. 421, which was also a case stated by a metropolitan police magistrate. The facts were as follows: The respondent, a retail milk seller, poured into a pail eight gallons of unskimmed milk, which she sold therefrom to her customers in small quantities, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the milk stirred, the cream was continually rising to the surface. When not more than two quarts of milk remained, the appellant purchased of the respondent a pint of milk from the pail, which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose to the appellant this deficiency, which was entirely due to the manner in which the earlier customers had been served. The magistrate dismissed the summons; but Lord Coleridge, C.J., and Wright, J., held that the words "so altered" in the section refer to a physical alteration of the article, irrespective of the intent with which the alteration is made, and that the respondent, in selling the milk so altered without giving notice of its condition, had been guilty of an offence. Lord Coleridge said: "It is not necessary in the interests of the public to prohibit the mere alteration of an article of food unless the alteration is coupled with the intent of selling it in its altered state without notice, for the mere alteration without such inten-

tion may be perfectly innocent. Where, however, the alteration is followed by the actual sale, the intent with which the article was altered must become perfectly immaterial, the injury to the purchaser being just the same whether there was a wrongful intent or not."

In *Morris* v. *Corbett* (1892), 56 J. P. 649, the facts were as follows: The servant of a dairyman, being short in his supply of milk, bought two gallons from another dairyman and mixed it with his own. The milk so mixed he sold to various customers. An inspector bought half a pint of it, and it was found to be deficient in cream to the extent of 20 per cent. The dairyman was accordingly prosecuted under this section. The magistrates were of opinion that he had a good defence; but the High Court held that, though neither the dairyman nor his servant knew, or had reason to know, that cream had been abstracted from the milk, this was no defence, and that the case was governed by *Pain* v. *Boughtwood*, and *Dyke* v. *Gower*, *ante*, p. 41.

The same ruling was given in *Spiers and Pond* v. *Bennett*, *infra*, and see the judgment of GIBSON, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

Special Contract.—A special contract between vendor and purchaser as to the quality of the article to be delivered by the former is no bar to a conviction under this section. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304; 55 J. P. 726; 60 L. J. M. C. 143; 65 L. T. 82; 39 W. R. 525; 17 Cox C. C. 322, the appellant contracted to supply milk to a workhouse at a certain price; by the contract the milk was to contain a certain percentage of cream, and it was to be tested on each delivery, and a reduction was to be made in the price in respect of any deficiency in cream. When the daily supply, contained in five cans, was being delivered, the respondent, acting under s. 3 of the Act of 1879, *post*, p. 111, procured a sample from each of the five cans, and subsequently laid informations under this section in respect of two of the samples, in which there was found to be a large deficiency of cream:—*Held*, that the provisions in the contract as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act:—*Held*, *also*, that there could be two separate informations in respect of the two

samples found to be deficient. *Keenan* v. *Costelloe* (1910), 44 Ir. L. T. 218, was a similar case. And see *Few* v. *Robinson, ante*, p. 22.

(*c*) **"Disclosure."**—The question what is or what is not a sufficient disclosure to satisfy the requirements of this section has been dealt with by the following cases: In *Jones* v. *Davies* (1893), 57 J. P. 808; 69 L. T. 497, Davies sold a tin of condensed milk which had upon it a label on which were printed the words, "Condensed Milk, Swiss Dairy Brand," and in smaller type: "This tin contains skimmed milk." The analysis of the contents of the tin showed a deficiency of 93 per cent. of butter fat; but though the purchaser's attention had not been called to the words on the label at the time of the sale, the court held that this was a sufficient "disclosure of the alteration" under this section. This case was followed in *Platt* v. *Tyler* (1894), 58 J. P. 71.

In *Spiers and Pond* v. *Bennett*, [1896] 2 Q. B. 65; 60 J. P. 437; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R. 510; 18 Cox C. C. 332, the appellants were prosecuted under this section for selling milk from which 17 per cent. of cream had been extracted. The deficiency was caused by the milk being poured out in such a way that the greater part of the cream remained in the vessel from which it was poured. The milk was supplied in a glass, whereon were distinctly written in blue colour the words: "Not guaranteed as new or pure milk, or with all its cream; see notices." On the counter a few feet from the place where the purchaser was standing when he was served with the milk, and facing the entrance to the refreshment rooms from the street, was placed a framed notice in these words: "Milk notice. Spiers and Pond, Limited, purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition, but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Sale of Food and Drugs Act) do not therefore sell it as such." The High Court (Lord RUSSELL OF KILLOWEN, C.J., and WILLS, J.), reversing the decision of a metropolitan police magistrate, held that the alteration in the milk was sufficiently disclosed.

In *Petchey* v. *Taylor* (1898), 62 J. P. 360; 78 L. T. 501; 19 Cox C. C. 38, a tin of condensed milk was sold as "con-

densed skimmed milk" ; 97 per cent. of the original fat had been abstracted by the use of a separator. It was proved that not more than 63 per cent. can be abstracted by skimming. The magistrate held that the description "skimmed milk" did not properly describe the alteration. The High Court held that it was a question of fact whether the description was sufficient, and that the magistrate's decision could not be interfered with. It seems somewhat difficult to reconcile this case with *Jones* v. *Davies*, *supra*, in which the facts were very similar, but WILLS, J., in his judgment, pointed out that in *Jones* v. *Davies* no evidence was given to show how much cream can be abstracted by skimming, and consequently the point upon which the magistrate decided the later case was never taken.

Petchey v. *Taylor* seems also to differ from its predecessors, *Jones* v. *Davies* and *Spiers and Pond* v. *Bennett*, in this: that, while in *Petchey* v. *Taylor* it was definitely held that the question of sufficient disclosure is one of fact for the magistrate, with which the court will not interfere, in the two earlier cases the court, after reviewing the facts, reversed the magistrates' decision. The explanation probably is, that the court in the two earlier cases were really of opinion (though they do not appear to have said so in so many words) that there was no evidence at all upon which the magistrates could find as they did.

(*d*) **Penalty.**—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899, *post*, p. 155, which also provides for the imprisonment of the offender under certain circumstances.

APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

10. *Appointment of Analysts.*—In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the

metropolis (*a*), the court of quarter sessions of every county (*b*), and the town council of every borough (*c*) having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency (*d*) to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply (*e*) at their ordinary meetings for counties, and the commissioners or boards of police,

or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions: Provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury (*f*) of every county and town council of every borough: Provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

(*a*) **"Vestries and District Boards,"** now metropolitan boroughs (London Government Act, 1899 (62 & 63 Vict. c. 14)).

(*b*) **"Quarter Sessions,"** now county councils. See s. 3 of the Local Government Act, 1888 (51 & 52 Vict. c. 41).

(*c*) **Borough Analysts.**—The appointment of borough analysts has been considerably altered by the Local Government Act, 1888, ss. 34, 35, 38, 39. Their provisions are somewhat obscure, but the general effect of them appears to be as follows: By ss. 34 and 35 in all county boroughs (*i.e.*, the boroughs enumerated in the Third Schedule to the Act), and in all quarter sessions boroughs, containing a population of 10,000 or upwards by the census of 1881, the borough analyst is to be appointed by the town council, and by ss. 38 and 39, the borough analyst is to be appointed in all other cases by the county council. It is somewhat uncertain whether, in the case mentioned in s. 38, the borough is to be under the county analyst, or whether the county council must appoint a separate analyst for the borough; but the point is of little importance, since the county council can appoint as many analysts as they like for the whole county, and by s. 11 of this Act, a county analyst may also be appointed analyst of a borough.

(*d*) **Proof of Competency.**—See s. 3 (5) of the Act of 1899, and the regulations therein referred to.

(*e*) **"Commissioners of Supply,"** now county councils. See s. 11 (1) of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50).

(*f*) **"Grand Jury,"** now county councils. See Local Government (Ireland) Act, 1898.

11. *Town Council may engage the Analyst of another Borough or of the County.*—The town council of any borough (*a*) may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

(*a*) **Borough Analysts.**—See note (*c*) to s. 10 above.

12. *Power to Purchaser of Article of Food to have it Analysed.*—Any purchaser (*a*) of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed (*b*) by such analyst, and to receive from him a certificate of the result of his analysis (*c*).

(*a*) **"Any Purchaser,"**—*i.e.*, whether official or private.

(*b*) **Private Purchaser.**—It was formerly a disputed question whether a private purchaser, in buying an article for consumption and having it analysed in pursuance of this

section, should conform to the provisions of s. 14, *infra*, but the point has now been authoritatively settled by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83 ; 60 J. P. 118 ; 65 L. J. M. C. 18 ; 73 L. T. 580 ; 44 W. R. 220 (see the notes to s. 14, *infra*), a case which also goes to show that in the case of a purchase for consumption by a private purchaser, the analysis need not be made by an official analyst. But if a private analyst is employed he would have to be called at the hearing of the information, since his certificate would probably not be admissible in evidence under s. 21. See also note (*a*) to s. 20, *post*, p. 70.

(*c*) By s. 19 of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served along with the summons. See p. 156, *post*.

13. *Officer named to obtain a Sample of Food or Drug to submit to Analyst.*—Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction (*a*) and at the cost of the local authority (*b*) appointing such officer, inspector, or constable, or charged with the execution of this Act (*c*), may procure any sample of food (*d*) or drugs (*e*), and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed (*f*) by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place ; and such analyst (*g*) shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate (*h*) to such officer, wherein he shall specify the result of the analysis.

Samples of Milk.—Special provisions for taking samples of milk are made by Regulation VII. of the Milk and Cream Regulations, 1912, *post*, p. 225.

(*a*) **Direction of Local Authority.**—In *Hale* v. *Cole* (1891), 55 J. P. 376, the appellant was a police constable, and the prosecution was under s. 6 for selling gin 44·9 degrees under proof. The constable when he purchased the gin did not prove that he was acting under the direction of the local authority, and the magistrates on these grounds dismissed the prosecution. The High Court, however (Day and Lawrance, JJ.), held that where a constable prosecutes for the adulteration of food, it is not necessary to prove as a condition precedent that he was directed by the local authority appointing him such constable to prosecute, and judgment was accordingly given for the appellant.

In *Ross* v. *Helm*, [1913] 3 K. B. 462 ; 77 J. P. 13 ; 82 L. J. K. B. 1322 ; 107 L. T. 829 ; 23 Cox C. C. 248 ; 11 L. G. R. 36, the prosecuting inspector stated in evidence that his name was " A. Ross, an inspector under the Food and Drugs Acts," and put in the analyst's certificate, which was addressed to " Inspector A. Ross." The justices dismissed the summons on the ground that as the prosecutor had not produced his appointment there was no evidence that he was an inspector ; but the High Court held that the above facts were *primâ facie* evidence of his appointment, and Channell and Avory, JJ., expressed an opinion that it was unnecessary for him to prove that he was an inspector.

In *Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 142, the majority of the judges of the King's Bench Division in Ireland held that the local authority has performed its duty by appointing an inspector, and that when an inspector has once been appointed, he may take any proceedings at his own discretion and without any special authorisation from the authority appointing him.

The words " local authority " here mean any local authority, and are not confined to the class of local authorities who are empowered by s. 10 to appoint analysts (*Worthington* v. *Kyme* (1905), 69 J. P. 390 ; 93 L. T. 546 ; 54 W. R. 185 ; 21 Cox C. C. 37 ; 3 L. G. R. 1098).

(*b*) **Further Provisions.**—Further powers are given to the inspectors by s. 3 of the Act of 1879, *post*, p. 111, ss. 8 and 10 of the Margarine Act, 1887, *post*, pp. 130, 132, and s. 2 (2) of the Act of 1907, *post*, p. 176. Power is also given by s. 2 of the Act of 1899, *post*, p. 140, and s. 2 of the Act of 1907, *post*, p. 175 to the Local Government Board and the Board of

Agriculture, under certain circumstances, to take samples of articles of food, and for this purpose their officers have the same powers as inspectors appointed under the Sale of Food and Drugs Acts. The Commissioners of Customs have also power to take samples of imported articles under s. 1 (3) of the Act of 1899 (*post*, p. 137). Special powers of taking samples of milk are conferred upon the Local Government Board, local authorities, and their agents by the Milk and Cream Regulations, 1912, *post*, p. 225.

(*c*) **Purchase by Deputy.**—The effect of this is that the local authority cannot appoint any person other than those named to procure samples for analysis under the Acts; but any officer appointed under this section to procure samples may purchase them by deputy. Thus, in *Horder* v. *Scott* (1880), 5 Q. B. D. 552; 44 J. P. 520, 795; 48 L. J. M. C. 97; 42 L. T. 660, it was decided that it was not necessary that the officer taking proceedings under s. 20, *post*, should have acted personally in the purchase of the sample.

This decision was followed in *Smith* v. *Stace* (1881), 45 J. P. 141. Here a sanitary inspector went with an assistant to a shop where butter was sold, and sent the assistant into the shop, who bought a pound of butter for a shilling. The assistant came out and gave it to the inspector, who, within two minutes, went inside the shop, and gave notice to the shopkeeper that he had bought it for analysis, and he then and there divided it into parts in pursuance of s. 14 of the Act. The information was then laid by the inspector, and the court held that the purchaser of the article was the inspector, and not the assistant, and that therefore the inspector had properly given notice to the shopkeeper and laid the information.

In *Garforth* v. *Esam* (1892), 56 J. P. 521, an inspector sent his servant into a public-house to buy gin. When the servant had been inside the house a minute and had paid for the gin with money supplied to him by the inspector for that purpose, the inspector entered, gave the usual notification, and ultimately laid an information against the seller. For the defence it was contended that the inspector did not purchase the gin, that there was no evidence of purchase of gin before the court, and that the servant purchased the gin, and ought, therefore, to have laid the information, or to have been joined as the person prejudiced. The justices dis-

missed the information on the ground that the inspector was not prejudiced, but stated a case, and the High Court (LAWRANCE and WRIGHT, JJ.) held that they were wrong in so deciding, and gave judgment for the appellant. Similarly in *Macaulay* v. *Mackirdy* (1893), 3 White's Rep. (Sc.) 464, an inspector's duly authorised assistant went to a grocer's shop accompanied by a boy. The boy went in and bought half a pound of salt butter. The assistant then went in and laid his hand on the butter and said it was for the public analyst. The butter proved to be margarine. It was argued for the grocer that the conviction by the sheriff substitute was bad, as it is only the actual purchaser who can prosecute, but the High Court of Justiciary held that the conviction was right, and the LORD JUSTICE CLERK said: "I hold that a person who sends a messenger to buy the article of food for him is the purchaser within the meaning of the Act."

In *Massey* v. *Kelso* (1902), 4 Fraser (J.C.) 73; 39 Sc. L. R. 645, an inspector asked a street scavenger to go into a shop and buy butter, and gave him the money. The scavenger did so, whereupon the inspector walked into the shop, and took over the butter. The shopman was prosecuted for selling to the inspector, but objected that the sale was to the scavenger. The Court of Justiciary in Scotland overruled the objection.

And the same decision was given in *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, although the assistant who actually made the purchase was himself a qualified inspector and competent to take proceedings in his own name.

(*d*) **Sample of Food.**—For directions as to the manner in which samples should be taken, and as to the proper size of the samples, see letter of the Local Government Board, dated February 26th, 1894, and circulars of the Board of Agriculture, dated December 28th, 1901, and July 13th, 1903, in the Appendix, *post*, pp. 259, 264, 267. For seizure and destruction of unsound meat, milk, bread, etc., by any medical officer of health or inspector of nuisances, see ss. 116—119 of the Public Health Act, 1875.

(*e*) **Sample of Drug.**—Samples may be taken of drugs and medicines prescribed by panel doctors under the

National Health Insurance Acts; and the chemist is bound to supply them to the officer at the price usually charged to private customers. See Medical Benefit Regulations, 1920 (S. R. & O., 1920, No. 301), Sched. III. 1 (9).

(*f*) **Analysis must be Made.**—Where an official purchaser purchases for analysis, it is necessary that the analysis should be actually made, and such analysis is a condition precedent to a prosecution for adulteration, even though the seller admits at the time of the sale that the article sold is adulterated (*Smart* v. *Watts*, [1895] 1 Q. B. 219; 59 J. P. 54; 64 L. J. M. C. 89; 71 L. T. 768; 43 W. R. 379; 18 Cox C. C. 62). See note (*e*) to s. 14, *infra*. But in the case of a purchase by a private individual an analysis is apparently not a condition precedent to a prosecution. See note (*a*) to s. 20, *post*, p. 70.

(*g*) **Analysis by Deputy.**—The analyst need not make the analysis personally, but may do so through his assistants (*Bakewell* v. *Davis*, [1894] 1 Q. B. 296; 58 J. P. 228; 63 L. J. M. C. 93; 69 L. T. 832).

(*h*) **Certificate.**—By s. 19 (2) of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served with the summons. See p. 157, *post*.

14. *Provision for Dealing with the Sample when Purchased.*—The person purchasing (*a*) any article with the intention of submitting the same to analysis shall (*b*), after the purchase shall have been completed, forthwith (*c*) notify to the seller or his agent (*d*) selling the article his intention to have the same analysed (*e*) by the public analyst, and shall [*offer to*] (*f*) divide the article into three parts (*g*) to be then and there separated (*h*), and each part to be marked and sealed or fastened up in such manner as its nature will permit (*i*), and shall, if required to do so [*proceed accordingly, and shall*] (*f*) deliver one of the parts to the seller or his agent (*d*).

He (*k*) shall afterwards retain one of the said

parts (*l*) for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

(*a*) **"The Person Purchasing."**—Although prior to 1895 there was some doubt upon the point, it is now well settled that the provisions of this section do not apply to the case of a private purchaser purchasing for consumption. In *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 46 J. P. 727; 51 L. J. M. C. 111; 30 W. R. 748, it was decided that it is a condition precedent to the right of a private purchaser to take proceedings for a penalty under the Act that he should have given to the seller the notification required by s. 14, and this case was followed by MATHEW and WILLS, JJ., in *Harris* v. *Williams* (1889), 6 T. L. R. 47. But this view was dissented from by the Irish judges in *Enniskillen Union* (*Guardians*) v. *Hilliard* (1884), 14 L. R. Ir. 214, where it was held that the provisions of s. 14 do not apply to the purchase of an article *unless for analysis*, and therefore it is not a condition precedent to the right of a purchaser *for consumption* to take proceedings for a penalty under the Act that he should have given to the seller the notification required by that section. A similar view was taken by Lord COLERIDGE, C.J., in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, where he said (at p. 187): "Sections 12, 13, 14, 15, and 17 all deal with cases in which the article is not bought *for purposes of use as food*, but for the purpose of *submitting it to analysis*"; and the point has now been authoritatively decided by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83; 60 J. P. 118; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220. In this case a prosecution was instituted by private purchasers (the guardians of the Louth Union) with whom a grocer had entered into a contract for the supply of "Good fresh butter, English." A parcel of butter supplied under this contract was found upon analysis to contain 25 per cent. of margarine, but the provisions of s. 14 were not complied with by the guardians, and the grocer contended that compliance with the provisions of the section was a condition precedent to a prosecution under the Act. The magistrates nevertheless convicted him, and the High Court (Lord RUSSELL OF KILLOWEN, C.J.,

POLLOCK, B., and WRIGHT, J.) upheld the conviction. Lord RUSSELL, in delivering the judgment of the court, said: "Two decisions were cited to us, one, *Parsons* v. *Birmingham Dairy Co.*, *supra*, in which FIELD and CAVE, JJ., not expressly, but inferentially, decided that s. 14 applies to every purchaser whether purchasing with the intention of obtaining an analysis or not; the other, *Enniskillen Union* (*Guardians*) v. *Hilliard*, *supra*, in which DOWSE, B., and ANDREWS, J., expressly dissented from that decision. I agree with the reasoning of the learned judges in the Irish case, and I entirely adopt the view of the Act expressed by them. It seems to me that to adopt the contention of the appellant in this case would be to largely restrict the operation of a salutary Act, and to exclude that class of cases of which the present is an example, where there is a contract for the delivery of provisions within the Act which may extend over a considerable period of time, and also the class of cases in which provisions are purchased from time to time in small bulk without any suspicion at the time of purchase of any deceit being practised by the seller." But see *Rex* v. *Mahony*, quoted in note (*a*) to s. 20, *post*, p. 70.

It has been held that the provisions of this section need not be complied with in the case of a prosecution under s. 17 for refusing to sell. In the Irish case of *Clarkin* v. *McCartan* (1888), 22 Ir. L. T. 95, an inspector went into a public-house and asked for whisky out of a particular barrel. The publican refused to serve him. The inspector never at any time said that he was an inspector, or that he wanted the whisky for analysis; but it was held by the Exchequer Division that s. 14 does not apply to prosecutions under s. 17, and that the publican was rightly convicted. It is certainly difficult to see how any other decision could possibly have been arrived at. The formalities prescribed by s. 14 are only to be observed "after the purchase shall have been completed," whereas s. 17 deals with the case of a refusal to sell, and therefore with a case in which no purchase can possibly have been completed.

It further follows, from the subjoined cases, that an officer taking a sample under s. 3 of the Act of 1879, *post*, p. 111, need not comply with the provisions of this section. In *Rouch* v. *Hall* (1880), 6 Q. B. D. 17; 45 J. P. 220; 50 L. J. M. C. 6; 29 W. R. 304, it was decided that where milk

is in course of delivery, and a sample of it is procured for analysis under s. 3 of the Act of 1879 it is not necessary for the officer procuring such sample to notify to the seller or his agent his intention of having the sample analysed, or to deliver to the seller or his agent a portion of the sample in accordance with the provisions of s. 14 of the principal Act. Similarly in *Rolfe* v. *Thompson*, [1892] 2 Q. B. 196; 56 J. P. 425; 61 L. J. M. C. 184; 67 L. T. 295; 17 Cox C. C. 551, it was held that the provisions of s. 15, *post* (now repealed by the Act of 1899), need not be complied with in the case of a sample taken under s. 3 of the Act of 1879. In Scotland, in the case of *Morton* v. *Fyfe* (1896), 24 Rettie (J.C.) 9; 2 Adam, 174; 34 Sc. L. R. 55, the two cases above referred to were followed, though with great hesitation; and in *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, A. T. LAWRENCE, J., said that he was not satisfied on the point, which, however, had not been discussed in the case.

This section does not apply to samples taken under s. 2 of the Act of 1907, *post*, p. 175 (*Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134).

(*b*) **Notification of Analysis by Purchaser.**—When a sample is taken by an official purchaser for analysis the provisions of this section must be strictly complied with. Thus, in *Barnes* v. *Chipp* (1878), 3 Ex. D. 176; 47 L. J. M. C. 85; 38 L. T. 570; 26 W. R. 635, it was held that the notification required to be given by the purchaser under s. 14, viz., "that the sample had been purchased for the purpose of having it analysed by the public analyst," is a condition precedent to a prosecution under the Act. In that case a constable purchased half a pint of gin, and told the seller that he purchased it for the purpose of analysis, but did not add "by the public analyst," and there was apparently no evidence to show that the seller knew that there was to be an official analysis.

But it is not necessary, as might appear at first sight from *Barnes* v. *Chipp*, that the notification given by the purchaser should be made in the exact words of the section; nor, indeed, is it necessary that any words should be used at all so long as the seller is made unmistakably aware of what is intended. Thus, in *Wheeker* v. *Webb* (1887), 51

J. P. 661, where a seller was informed upon purchase that the article was to be examined by the "county analyst," and he knew that the county analyst was the public analyst of the district, it was held that there had been a sufficient notification under the Act. In the course of the argument, MATHEW, J., said: "You say the words 'public analyst' must be used either in speech or writing. Surely this is a superstitious adherence to form. The statute says the constable is to notify to the seller his intention to have the article analysed by the public analyst. He need not say anything if the seller knew all about what was intended"; and in delivering judgment, CAVE, J., said: ". . . no particular form of words is required, nor even any words at all. What is necessary is that the seller must know that the samples are to be taken for the purpose of analysis so that he may see that the samples are fairly taken." With reference to *Barnes* v. *Chipp*, he added: "The case of *Barnes* v. *Chipp* is no authority for more than this, that the seller must know that the analysis is to be made by an official person. In that case . . . the court came to the conclusion that the seller did not know that there was to be an official analysis. That was a totally different case from this, for here the justices have found that the seller did know that there was to be an official analysis."

It is a usual, and useful, practice to print on the official label which the inspector affixes to each sample a statement that it has been bought for analysis under the Sale of Food and Drugs Acts.

(*c*) **"Forthwith."**—As to the construction of the word "forthwith" in this section, it was decided in *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 46 J. P. 727; 51 L. J. M. C. 111; 30 W. R. 748, that notification two days after the delivery of the article is not notification "forthwith." And FIELD, J., said: "I think the intention of the Act is to strike at the moment of time at which the seller parts with the article." On the other hand, in *Somerset* v. *Miller* (1890), 54 J. P. 614, the appellant, an inspector, sent a constable in plain clothes into the respondent's inn to buy a bottle of gin. The constable, having purchased the gin, came out, and two minutes later both men went inside and told the respondent that the gin was purchased for analysis, divided it, etc. The gin was found to be thirty-

seven degrees below proof. Upon a prosecution, the justices had held that the case must be dismissed on the ground that the object of the purchase had not been notified "forthwith"; but the High Court (Lord Coleridge, C.J., and Lord Esher, M.R.) held without hesitation that the justices were wrong.

(*d*) **Agent.**—In *Rouch* v. *Hall*, *supra*, note (*a*), it was held that where milk was sent up to London by train, a railway porter at the terminus at which the milk arrived was not the agent of the seller for the purpose of receiving this notification.

The notification may be given to an agent who was not personally concerned in the sale (*per* Lord Alverstone, C.J., and Avory, J., *dissentiente* Pickford, J., in *Davies* v. *Burrell*, [1912] 2 K. B. 243; 76 J. P. 285; 81 L. J. K. B. 736; 107 L. T. 91; 23 Cox C. C. 81; 28 T. L. R. 389; 10 L. G. R. 645, where the sale was by one shop assistant and the notification given to another).

(*e*) **Notification must be Given and Analysis Made.**—The notification must be given and an analysis actually made, even if the fact of adulteration is admitted at the time of the sale. In *Smart* v. *Watts*, [1895] 1 Q. B. 219; 59 J. P. 54; 64 L. J. M. C. 89; 71 L. T. 768; 43 W. R. 379; 18 Cox C. C. 62, an inspector bought some butter at a shop. Immediately after the sale the manager of the shop admitted that the butter was in fact margarine. In consequence of this admission the inspector did not notify to him that the article was purchased for analysis, nor did he procure an analysis to be made. The High Court (Wills and Wright, JJ.) held that the notification ought to have been given and the analysis made, notwithstanding the admission, and quashed the conviction. But this would apparently not be so in the case of a purchase by a private individual. See note (*a*) to s. 20, *post*, p. 70.

(*f*) **Words Repealed.**—The words in italics and enclosed in square brackets are repealed by s. 13 of the Act of 1899, and therefore the case of *Chapell* v. *Emson* (1883), 48 J. P. 200, in which the words "offer to" were interpreted, is now useless as an authority.

(*g*) **Three Parts.**—Where a sample is taken under s. 2 of the Act of 1899, by an officer of the Local Government Board or the Board of Agriculture, the sample has to be divided

into four parts (s. 2 (1) (a) of the Act of 1899), one of which parts is sent to the Board.

Each part must be sufficient to admit of its being properly analysed (*Lowery* v. *Hallard*, [1906] 1 K. B. 398; 70 J. P. 57; 75 L. J. K. B. 249; 93 L. T. 844; 54 W. R. 520; 21 Cox C. C. 73; 4 L. G. R. 189), but it is no objection that the third part, through accident, afterwards becomes unfit for analysis (*Suckling* v. *Parker*, and *Winterbottom* v. *Allwood*, *infra*).

(*h*) **Separation of Sample.**—The separation must be made from one undivided sample. Thus, in *Mason* v. *Cowdary*, [1900] 2 Q. B. 419; 64 J. P. 662; 69 L. J. Q. B. 667; 82 L. T. 802; 49 W. R. 28; 19 Cox C. C. 536, an inspector bought six bottles of camphorated oil and divided them into three lots of two bottles each, putting each lot into a separate bag and sealing them. He gave one lot to the seller, sent one lot for analysis, and kept the third lot. He did not open the bottles or mix or divide their contents. DARLING and BIGHAM, JJ., held that he had not satisfied the requirements of the section. But in *Smith* v. *Savage*, [1905] 2 K. B. 88; 69 J. P. 245; 74 L. J. K. B. 576; 92 L. T. 775; 53 W. R. 477; 20 Cox C. C. 847; 3 L. G. R. 582, an inspector asked for cream of tartar, and a box of small packets was produced. He asked for four packets, opened them, and poured their contents into one heap, which he divided into three parts. The justices, on the authority of *Mason* v. *Cowdary*, thought he had bought four articles, and dismissed the summons, but the High Court held that he had bought one article and had complied with the section. And see *Winterbottom* v. *Allwood*, *infra*.

In *Telford* v. *Fyfe*, [1908] Sess. Cas. (J.) 83, a milkman had a contract to supply a large amount of milk daily to a hospital, which he delivered in sixteen cans and poured them all into one large receptacle at the hospital. Before they were poured out, an inspector took a sample from each of a number of the cans, and had them analysed separately. The Court of Justiciary held that the samples ought to have been mixed before analysis.

As to this question see also note (*f*) to s. 3 of the Act of 1879, *post*, p. 116.

(*i*) **Marked, Sealed or Fastened up.**—In *Suckling* v. *Parker*, [1906] 1 K. B. 527; 70 J. P. 209; 75 L. J. K. B. 302; 94

L. T. 554; 54 W. R. 438; 21 Cox C. C. 145; 4 L. G. R. 531, the third part of a sample of milk was placed in a bottle and corked, but the cork was not tied down. The milk fermented, blew the cork out, and part of the contents escaped, so that the Government analyst could not make an accurate analysis. At the trial, defendant called for the production and analysis of the third part. The High Court held that it was not a condition precedent that the third part should be analysed, but that the justices must find whether or not the third part had been "sealed or fastened up in such manner as its nature will permit." In such cases it sometimes happens that the bottle bursts and the whole sample is lost, but, it is submitted, the result would be the same.

And in *Winterbottom* v. *Allwood*, [1915] 2 K. B. 608; 79 J. P. 161; 84 L. J. K. B. 1225; 112 L. T. 590; 31 T. L. R. 68; 24 Cox C. C. 632; 13 L. G. R. 551, an inspector bought "Sardines in olive oil," and was served with a number of tins, which he opened and mixed their contents and put them into three jars securely sealed and gave one jar to the seller. The analyst certified that the oil contained 19 per cent. of cotton seed oil. At the date of the service of the summons, four weeks after the purchase, the contents of the other two jars had, without any negligence by the inspector, deteriorated so that they could not be analysed. It was held that the seller had had a reasonable opportunity of having his sample analysed, and that he was rightly convicted. This case was followed in *Chalmers* v. *M'Meeking* (1920), 58 Sc. L. R. 227.

The sample need not necessarily be dated, and the fact that it has been marked with the wrong date is no ground for quashing a conviction if there is sufficient evidence of its identity (*Howe* v. *Knowles*, [1909] Sess. Cas. (J.) 61; 46 Sc. L. R. 881).

(*k*) **Procuring Samples by Agent or Deputy.**—An officer purchasing for analysis may employ an agent or deputy to procure samples for him, and such agent or deputy need not himself deliver the sample to the analyst, but may hand it to a third person for the purpose of such delivery. See the cases set out in note (*c*) to s. 13, *ante*, p. 51.

(*l*) **Production of Part Retained.**—The part retained by the purchaser must be produced at the hearing. See s. 21

post, p. 72. Failure to do so may be fatal to a conviction. See *Hutchison* v. *Stevenson*, *post*, p. 75, and *Suckling* v. *Parker*, *ante*, p. 59.

15. *Provision when Sample is not Divided.*—[*If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate, to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.*]

This section is repealed by s. 27 of the Act of 1899.

16. *Provision for sending Article to the Analyst through the Post Office.*—If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may (*a*) be forwarded to the analyst through the post office as a [*registered letter*] (*b*) subject to any regulations (*c*) which the Postmaster-General may make in reference to the carrying and delivery of such article ; and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

(*a*) **"May."**—The word is not " must " or " shall," and, therefore, other means of conveyance may be used. See *Austin* v. *Dunshaughlin Guardians* (1911), 45 Ir. L. T. 213. The advantage of using the registered post, and thereby obtaining proof positive of the transmission of the sample, is, however, obvious.

(*b*) **"Registered Letter."**—The words " registered parcel " are now substituted by s. 15 of the Act of 1899.

(*c*) **Regulations of Postmaster-General.**—The following extracts from the Post Office Guide should be noted :

There shall not be posted, or conveyed, or delivered by post any postal packet—

(3) Consisting of or containing—

(a) Any explosive substance.
(b) Any dangerous substance.
(c) Any filth.
(d) Any noxious or deleterious substance.
(g) Any article or thing whatsoever which is likely to injure other postal packets in course of conveyance, or any receptacle in which the same are conveyed, or an officer of the post office or other person who may deal with such packet.

Prohibited articles, if tendered for transmission, will be refused, or, if detected in transit, detained. They are liable to be dealt with in such manner as the Postmaster-General may direct, and the sender is in some cases liable to prosecution.

Parcels must be so packed and correspondence of every kind must be so made up as not only to preserve the contents from loss or damage in the post, but also not to injure other packets.

Any packet containing anything of a fragile nature should be marked or labelled "Fragile."

Glass and Crockery, Liquids, Butter and other Greasy Substances, Cheese, and other strong-smelling articles, and Colouring Powders should be sent by *parcel* post. Bottles of liquid should be firmly packed in rigid metal or wooden boxes, with plenty of soft packing between the bottles and the top, bottom, and sides of the boxes ; corrugated paper is suitable for packing bottles inside boxes ; each bottle should be separately wrapped. China, crockery, or glass should be similarly packed. The lids of tins containing paint, varnish or similar substances should be soldered in four places. Tins of cream should be wrapped in brown paper and securely tied with string, crossing the lid in two directions. Tins containing a quart or more of liquid should be packed in wooden boxes or wicker cases. Greasy and strong-smelling articles and colouring powders should be so packed that the contents will not soil or taint other packets.

These articles may, however, be sent by *letter post* under the following conditions :—

(i.) Nothing inflammable, corrosive, or explosive may be sent, nor anything having an odour so strong as to affect the contents of other packets in the mails.

(ii.) They must be packed as follows :—

Glass and *Crockery* must be securely packed (in boxes of metal, wood, leather or cardboard) in such a way as to prevent all risk of injury to the mails or the officers of the post office.

Liquids must be enclosed in bottles, firmly sealed ; the bottles must be enclosed in a box of wood, leather or metal, and packed securely in the box by means of corrugated paper or other suitable material, a sufficient quantity of sawdust or some spongy substance being added to absorb all the liquid contents in case of the bottle being broken. Special attention must be paid to the packing round the shoulders of the bottle ; and the box must open at one end only, and have a tightly-fitting lid or a screw lid.

Semi-Liquids and Greases must have an inner covering securely closed and an outer covering of metal, wood, or leather, sufficiently strong to prevent any risk of the contents escaping during transit.

Powders must have an inner covering securely closed, and a strong outer covering of metal, wood, leather, or cardboard.

(iii.) They are sent *at the sender's risk*, the Postmaster-General accepting no liability in the case of either loss or damage, even if the packets are registered.

(iv.) If insecurely packed they will be stopped. The public are warned that such insecurely packed packets come within the category of articles " likely to injure other postal packets in course of conveyance or an officer of the post office," and are, therefore, *prohibited* from being sent by post. The senders of such packets are liable to penalties under the Post Office Act, 1908, whether the packets are sent by letter or parcel post.

Any article sent by letter post which cannot from the nature of its contents or excess of size be transmitted thereby is, if admissible by parcel post, transferred to that post, and treated and charged as a parcel posted out of course,

i.e., charged with the deficient postage at the parcel post rate together with a fine of a penny. If inadmissible by parcel post, the packet is liable to be detained and dealt with as the Postmaster-General may direct.

Articles sent for Medical Examination or Analysis.—Deleterious liquids or substances, though otherwise prohibited from transmission by post, may be sent for medical examination or analysis to a recognised medical laboratory or institute, whether or not belonging to a public health authority, or to a qualified medical practitioner or veterinary surgeon within the United Kingdom, by *letter post, and on no account by parcel post*, under the following conditions :—

Any such liquid or substance must be enclosed in a receptacle, hermetically sealed or otherwise securely closed, which receptacle must itself be placed in a strong wooden, leather, or metal case in such a way that it cannot shift about, and with a sufficient quantity of some absorbent material (such as sawdust or cotton-wool) so packed about the receptacle as absolutely to prevent any possible leakage from the package in the event of damage to the receptacle. The packet so made up must be conspicuously marked "Fragile with care," and bear the words "Pathological Specimen."

Any packet of the kind found in the parcel post, or found in the letter post not packed and marked as directed, will be at once stopped and destroyed with all its wrappings and enclosures. Further, any person who sends by post a deleterious liquid or substance for medical examination or analysis otherwise than as provided by these regulations is liable to prosecution.

If receptacles are supplied by a laboratory or institute, they should be submitted to the Secretary, General Post Office, in order to ascertain whether they are regarded as complying with the regulations.

17. *Person Refusing to sell any Article to any Officer liable to Penalty.*—If any such officer, inspector, or constable as above described, shall apply to purchase (*a*) any article of food or any drug exposed for sale (*b*), or on sale by retail (*c*) on any premises or in any shop or stores (*d*), and shall tender (*e*) the

price for the quantity (*f*) which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell (*g*) the same to such officer, inspector, or constable, such person shall be liable to a penalty (*h*) not exceeding ten pounds.

Who may Take Proceedings.—In *Connor* v. *Butler* (1902), 2 I. R. 569, *post*, p. 142, the King's Bench Division in Ireland held that any person, even a common informer, may take proceedings under this section.

(*a*) **Purchase by Official.**—It has been held that the provisions of s. 14 of this Act do not apply to this section. See note (*a*) to s. 14, *ante*. Note also that the offer to purchase must be made by an official, and not by a private person.

(*b*) **Demand of Inspector for Particular Supply.**—The question how far an inspector is entitled, when purchasing a sample for analysis, to demand to be supplied out of a particular receptacle in the shop is discussed in *Payne* v. *Hack* (1894), 58 J. P. 165. In that case an inspector in plain clothes was supplied by a publican with rum out of a bottle which stood on a shelf in the bar. After tasting it, the inspector asked for half a pint of rum. The publican thereupon was about to supply it out of another vessel, but the inspector demanded to be supplied out of the same bottle, saying that he was an inspector, and that it was for analysis. The publican refused, was summoned under this section, and convicted. The conviction was confirmed by the High Court upon a case being stated, and it was held that the publican was bound to supply the sample out of the same bottle as that from which he had originally served the inspector. The reason for this is stated by BRUCE, J. "The inspector," he said, "demanded to be supplied with a sample taken out of the same bottle. I think he was entitled to this; for, if he were not so, nothing would be easier than for the seller to keep two vessels, and supply purchasers out of one when the article was intended for consumption, and supply out of the other when the article was intended for analysis. Without, therefore, going so far as to say that an inspector is entitled to go into a shop and demand to have a sample out of any vessel he likes, I think

that as he had already been supplied out of a particular bottle, he was entitled to have the sample taken from that bottle." And in *McNair* v. *Terroni*, [1915] 1 K. B. 526; 79 J. P. 219; 84 L. J. K. B. 357; 112 L. T. 503; 31 T. L. R. 82; 13 L. G. R. 377, the defendant, an eating-house keeper, did not sell milk by itself, but there was a pan of milk on the counter labelled "Pure Milk" and used for putting into cups of tea or coffee. An inspector asked to be supplied with milk and was refused. It was held that an offence had been committed. See also *Farley* v. *Higginbotham* in note (*g*) *infra*.

Another point that was discussed in *Payne* v. *Hack*, *supra*, was the question how far an inspector is bound to show his authority. In the present instance the publican had not demanded to see his authority, and it was held that, this being so, the inspector was not bound to produce it. But KENNEDY, J., added: "I am inclined to think that if the inspector has no badge or other mark to denote his authority" (he was in plain clothes in this case), "and is unknown to the seller, and the seller demands his authority before selling the article, it would be requisite for the purchaser to show that authority before the seller could be treated under the statute as refusing to sell." The case of *Hale* v. *Cole* (1891), 55 J. P. 376, also deals with the question of a constable's authority. It was decided under a different section (s. 13, *ante*, p. 49), and the facts were dissimilar to those in *Payne* v. *Hack*, but the two cases may well be compared.

(*c*) **Application of Section to Wholesale Dealers.**—This section applies to wholesale dealers if the article is exposed for sale. In the Irish case of *McHugh* v. *McGrath*, [1894] 2 I. R. 78; 27 Ir. L. T. 102, a farmer was selling butter wholesale at a butter market. An inspector asked him for a pound of butter for analysis, but he refused to serve him. It was proved that the custom of the market was to sell butter by the firkin, and that the sellers invariably refused to break bulk, but the Queen's Bench Division in Ireland held that s. 17 applies to wholesale as well as retail sales, and that the farmer ought to be convicted.

(*d*) **"Shop or Stores."**—This provision must be read in connection with s. 5 of the amending Act of 1879, *post*,

p. 118, which extends it to articles sold in any street or open place of public resort.

(*e*) **"Shall Tender."**—The money must be actually produced and offered. The mere proposal to purchase would not amount to a legal tender.

(*f*) **Quantity.**—By s. 18 of the Act of 1899, *post*, p. 156, where the article is exposed for sale in an unopened tin or packet duly labelled, the vendor need not sell it except in such unopened tin or packet.

(*g*) **Refusal to Sell.**—In *Farley* v. *Higginbotham* (1898), 42 Sol. J. 309, a policeman under the orders of an inspector asked the servant of a shopkeeper for coffee, and was supplied. On being told that it was for analysis the servant seized the coffee and upset it on the floor. The policeman asked for some more coffee out of the same tin and was refused, the shopkeeper saying that the servant had orders only to sell that coffee as coffee and chicory. WRIGHT and DARLING, JJ., held that there had been a refusal to sell, and that the shopkeeper was liable for the act of his servant.

In *Soutar* v. *Kerr*, [1907] Sess. Cas. (J.) 49 ; 5 Adam, 260, a milk seller was selling milk to the public out of a can, and was supplying it out of the "cran" (*i.e.*, tap or syphon). An inspector asked for a sample, and the seller offered one from the top of the can, but refused to supply one from the "cran":—*Held*, by the Court of Justiciary, that the seller was guilty of refusing to sell under this section, but not guilty of obstructing the inspector under s. 16 of the Act of 1899.

In *French* v. *Card* (1909), 73 J. P. 389 ; 101 L. T. 428, the appellant was exposing for sale in the street milk which in fact was skimmed. On being asked by an inspector for a pint of new milk, he upset the can into the gutter and said, "I was not going to let you have skimmed milk for new." He had regular customers for skimmed milk, and there was no direct evidence that he was intending to sell this milk as new. It was held by the King's Bench Division that under all the circumstances there was no evidence of an exposal for sale as new milk, and that therefore he could not be convicted under this section for refusing to sell.

The judgment in the above case affords ground for the

contention that the inspector is entitled to demand that the sample shall be given under the name under which it is being sold to the public, but as to this see *Sandys* v. *Small* and the other cases cited in note (*c*) to s. 6, *ante*, p. 14. The point is doubtful.

Guilty knowledge is a necessary ingredient of this offence; see the judgment of Gibson, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

It is not larceny if the seller repossesses himself of the sample and offers to return the money. Thus in *Hewson* v. *Gamble* (1892), 56 J. P. 534, an inspector bought a sample of coffee and paid for it. When the seller heard that it was bought for analysis he snatched it out of the inspector's hand and said that it was not sold as pure coffee, pointing to a label on the tin, and offered to return the money. Upon these facts Hawkins and Wills, JJ., held that there was no evidence of felonious intent. But the seller would now be liable to a penalty under s. 16 of the Act of 1899 for obstructing the inspector in the course of his duty.

(*h*) **Penalty.**—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899, *post*, p. 155.

18. *Form of the Certificate.*—The certificate of the analysis (*a*) shall be in the form set forth in the Schedule hereto, or to the like effect (*b*).

(*a*) **Certificate.**—For the sufficiency of the certificate as evidence of the facts stated in it, see s. 21 of this Act, and s. 22 of the Act of 1899, *post*, pp. 72, 169.

(*b*) **Form of Certificate.**—See p. 103, *post*, and the cases collected in the notes to the Schedule.

19. *Quarterly Report of the Analyst.*—Every analyst appointed under any Act hereby repealed or this Act shall report (*a*) quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof; and such report shall be

presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

(*a*) For form of analyst's report to be sent to Local Government Board see Appendix, *post*, p. 219, and for observations thereon see letter from the Local Government Board, dated January 1st, 1879, and Memorandum of January, 1921, Appendix, *post*, pp. 258, 297.

PROCEEDINGS AGAINST OFFENDERS.

20. *Proceedings against Offenders.*—When the analyst, having analysed any article, shall have given his certificate (*a*) of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made (*b*) may take proceedings (*c*) for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place (*d*) where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three (*e*). In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and

with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

(*a*) **Certificate of Analyst.**—It seems now to be clearly settled that where an article has been purchased for the purpose of analysis the certificate of an analyst is a condition precedent to a public prosecution for adulteration; see *Peart* v. *Barstow* (1880), 44 J. P. 699, *post*, p. 104, and *Smart* v. *Watts*, *ante*, p. 53. These cases have been referred to with approval by HAWKINS, J., in *R.* v. *Smith*, *post*, p. 95. On the other hand, in the case of a private prosecution, it would appear that the certificate is not a condition precedent, for the judgment of Lord RUSSELL OF KILLOWEN, C.J., POLLOCK, B., and WRIGHT, J., in *Buckler* v. *Wilson*, *ante*, pp. 49, 54, in which the prosecutor was a private individual, contains the following passage: "The effect of s. 21 is merely to make the production of a certificate of analysis under s. 14 of itself sufficient evidence of the facts therein stated. There is nothing in the Act to prevent the proof of an offence by other satisfactory evidence; nor is it necessary that the purchaser should obtain the certificate of the public analyst except where he purchases with an intention of submitting to analysis." In *Rex* v. *Mahony*, [1909] 2 I. R. 490, the Irish Court of King's Bench took the opposite view, pointing out that the passage above quoted was merely an *obiter dictum*, because a certificate had actually been obtained, and stating that the English court had misapprehended the judgments in *Enniskillen* v. *Hilliard*, *ante*, p. 54. But it is submitted that *Buckler* v. *Wilson*, being a considered judgment of a court of three judges, would be followed in England notwithstanding *Rex* v. *Mahony*.

(*b*) **Person causing Analysis to be made.**—The local inspector may take proceedings under this section, even though the person who actually caused the analysis to be

made was an officer of a Government Department acting under the powers conferred by s. 2 of the Act of 1899 (*Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 142), or where the person who purchased the sample was himself a fully qualified inspector (*Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422).

The words are quite general, and it is no objection that the person who caused the analysis to be made was acting under the directions of a local authority who had no power under s. 10 to appoint an analyst (*Worthington* v. *Kyme* (1905), 69 J. P. 390; 93 L. T. 546; 54 W. R. 185; 21 Cox C. C. 37; 3 L. G. R. 1098).

As to whether a prosecuting inspector must prove his appointment, see *Ross* v. *Helm*, *ante*, p. 50.

(*c*) **Proceedings against Limited Company.**—In taking proceedings against a limited company the summons must be served at the registered office of the company as provided by ss. 62 and 116 of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), irrespective of the place where the article was purchased (*Pearks, Gunston and Tee, Limited* v. *Richardson*, [1902] 1 K. B. 91; 66 J. P. 119; 50 W. R. 286).

(*d*) **Where Prosecution may be Instituted.**—By s. 20 (5) of the Act of 1899, *post*, p. 163, a prosecution for giving a false warranty may be instituted before the court, either of the place where the warranty was given, or of the place where the article was purchased, thus overruling a contrary decision given in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307.

Where an offence has been committed in one petty sessional division of a county, the proceedings may be taken in another division of the same county, before justices who usually act for the latter division (*Rex* v. *Beacontree Justices*, [1915] 3 K. B. 388; 79 J. P. 461; 84 L. J. K. B. 2230; 113 L. T. 727; 31 T. L. R. 509; 13 L. G. R. 1094).

(*e*) **Penalty, how Recovered.**—See the Summary Jurisdiction Act, 1848 (Jervis's Act). See also s. 19 of the Act of 1899, *post*, p. 156. For forms of information and summons, see pp. 312—314, *post*.

21. *Certificate of Analyst primâ facie Evidence* (*a*). *Defendant and his Wife may be examined.*—At the hearing of the information in such proceeding (*b*) the production of the certificate of the analyst shall be sufficient evidence (*c*) of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness (*d*), and the parts of the articles retained by the person who purchased the article shall be produced (*e*); and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

(*a*) **Other Provisions as to Certificates.**—Section 22 of the Act of 1899, *post*, p. 169, contains similar provisions for the production by the defendant of a certificate of analysis. Note also the provisions of s. 19 of the Act of 1899 with regard to any certificate obtained by the prosecutor, *post*, p. 156. As regards samples of milk or cream taken under the Milk and Dairies (Amendment) Act, 1922, special provisions are made by s. 13 of that Act, *post*, p. 199.

(*b*) **"Such Proceedings."**—In *R.* v. *Smith*, *infra*, HAWKINS, J., seems to have held that this section applies only to proceedings under s. 20. If this is so, it would seem to follow that it does not apply to proceedings where the article was not bought for analysis. See *Buckler* v. *Wilson*, *ante*, pp. 49, 54. This view, however, has apparently never been acted upon, and the dictum of HAWKINS, J., was not necessary for the actual decision of the case.

Apparently, the proceeding contemplated is the prosecution of the person from whom the sample was obtained, and not of the wholesale dealer from whom the retail seller obtained the article. Thus, in *Tyler* v. *Kingham and Son, Limited*, [1900] 2 Q. B. 413; 64 J. P. 598; 69 L. J. Q. B. 630; 83 L. T. 169; 19 Cox C. C. 547, a grocer, who was prosecuted for selling margarine as butter, produced a warranty from the wholesale dealer and was discharged. Proceedings were then taken against the wholesale dealer. At the trial the analyst's certificate, obtained for the pur-

poses of the original prosecution, was offered as evidence that the article sold was really margarine. RIDLEY and BIGHAM, JJ., held that the certificate was not evidence against the wholesale dealer.

The same point appears to have been raised in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307. The facts of the case were that Kerr, a farmer at Oakham, sold milk with a warranty to a dairy company at Finchley, who, in their turn, sold it to C., the consumer at Islington, where a sample was taken in course of delivery, and was found to be adulterated. The company were prosecuted at the Clerkenwell Police Court, and, having proved that they bought the milk with a warranty and sold it in the same state as they bought it, etc., were acquitted. A prosecution was thereupon instituted, also at Clerkenwell, against Kerr under s. 27 of the Act of 1875 for giving a false warranty. In the course of his judgment, HAWKINS, J., said: "The warranty was made at Oakham, the delivery by Kerr to the dairy company at Finchley. There was no sample of the milk taken by any inspector in the course of its delivery to the dairy company, and therefore there could be no 'such' sample to analyse, and, even had there been, no analysis was made by any analyst appointed for the district of Finchley, and the analysis of a sample taken after the milk had been actually delivered to, and received by, the dairy company in a district where Kerr never had any control over the milk, and of which he had no knowledge, could not affect him, and the certificate given as the result of the analysis of 'such' a sample could not, in our opinion, be any evidence as against Kerr." This appears to mean that even if the proceedings had been rightly instituted as regards place, nevertheless the certificate of the Clerkenwell analyst would have been no evidence against Kerr. *Tyler* v. *Kingham*, *supra*, is apparently a decision to the same effect, and if this is so, the result is that this section does not apply to proceedings for giving a false warranty, and that therefore in such proceedings the analyst must be called and give oral evidence. See also note (*m*) to s. 20 of the Act of 1899, *post*, p. 167. But this principle does not appear to extend to certificates obtained for the defence (see the preliminary note to s. 22 of the Act of 1899, *post*, p. 169).

(*c*) **Certificate, whether Conclusive.**—In *Harrison* v. *Richards* (1881), 45 J. P. 552, a milkman had been summoned for selling milk not of the nature, substance, or quality of the article demanded. The analyst's certificate was produced, but the defendant did not tender any evidence at the hearing, nor was the analyst examined. The magistrate dismissed the case on the ground that he was not satisfied that the milk had been adulterated, and thus refused to convict on the analyst's certificate, although no evidence was tendered against it. On appeal, the High Court held that as there was no evidence to contradict the certificate of the analyst, the magistrate ought to have acted on it and convicted the defendant. This case was followed in *Elder* v. *Dryden* (1908), 72 J. P. 355 ; 99 L. T. 20 ; 6 L. G. R. 786, and in *Robinson* v. *Newman* (1917), 81 J. P. 187 ; 86 L. J. K. B. 814 ; 117 L. T. 96 ; 25 Cox C. C. 749 ; 15 L. G. R. 475.

The opposite view appears at first sight to have been taken in the Scotch case of *Macleod* v. *O'Neil* (1882), 9 Rettie (J.C.), 32, but a careful consideration of the judgment in that case leads to the conclusion that the true ground of the decision was that the certificate of the analyst was not a proper one, and that, therefore, the sheriff was entitled to disregard it as he did. See also the cases quoted in note (*d*) to s. 22, *infra*, p. 76. And in *Chalmers* v. *M'Meeking* (1920), 58 Sc. L. R. 227, where no evidence was called to contradict the analyst, the Court of Justiciary held that the magistrate was bound to convict.

On the other hand, the analyst's certificate is not conclusive evidence of the facts as therein stated if there is evidence to meet it on the other side. In *Hewitt* v. *Taylor*, [1896] 1 Q. B. 287 ; 60 J. P. 311 ; 65 L. J. M. C. 68 ; 74 L. T. 51 ; 44 W. R. 431 ; 18 Cox C. C. 226—a milk prosecution under s. 6 of this Act—the analyst's certificate, after setting out the constituent parts of the sample, stated that in the analyst's opinion the milk had been watered. The seller did not require the analyst to be called, but tendered himself as a witness, and gave evidence to show that the milk had not been watered. The justices, considering the whole of the facts before them, dismissed the information, and the contention before the High Court was that, the analyst not having been required to be called, the certificate was conclusive, and could not be rebutted by the evidence of the

defendant. But the court declined to adopt this view, and held that the magistrates were right in deciding the case upon the whole of the evidence before them. Similar decisions have been given in Scotland in *Fyfe* v. *Hamilton* and *Todd* v. *Cochrane*, *infra*, p. 76.

In *Roberts* v. *Leeming* (1905), 69 J. P. 417 ; 3 L. G. R. 1031, the High Court held that an analysis of margarine made on the footing that the margarine was sold as butter is not admissible to show what the composition of margarine sold as margarine ought to be. In that case the evidence of the analysis was given verbally, but the principle seems equally applicable to a written certificate.

(*d*) **Oral Evidence of Analyst.**—It is at least doubtful whether the analyst can by his oral evidence supplement a deficiency in the written certificate. See *Hudson* v. *Bridge*, *post*, p. 104.

(*e*) **Production of Third Sample.**—Failure to produce the third sample may be fatal to a conviction. In the Scotch case of *Hutchison* v. *Stevenson* (1902), 4 Fraser (J.C.), 69 ; 3 Adam, 651 ; 39 Sc. L. R. 789, at the hearing of the prosecution the defendant called for the production of the third sample in order that it might be submitted to the Government analyst. The prosecutor failed to produce it, the bottle containing it having been accidentally broken. The Court of Justiciary held that the failure to produce the sample was fatal to a conviction. But see *Suckling* v. *Parker*, and *Winterbottom* v. *Allwood*, *ante*, pp. 59, 60.

22. *Power to Justices to have Articles of Food and Drug Analysed.*—The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may (*a*), upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue (*b*), who shall thereupon direct the chemical officers of their department at Somerset House (*c*) to make the analysis, and give a certificate (*d*) to such justices of the result of the analysis ; and the expense of such analysis

shall be paid by the complainant or the defendant as the justices may by order direct.

(*a*) **Who may Require Sample to be Sent.**—The provisions of this section are amplified by s. 21 of the Act of 1899, *post*, p. 168, which gives to either party the right to require the sample to be sent to the Government laboratory; and the justices may so send it without any previous request.

(*b*) **Commissioners of Inland Revenue.**—Now the Commissioners of Customs and Excise. See Order in Council of February 15th, 1909.

(*c*) **Government Laboratory.**—The Government laboratory has now been removed from Somerset House to Clement's Inn Passage, Strand, W.C., and its officers are now styled "Government analysts"; the chief officer being styled "The Government Chemist."

(*d*) **Certificate, whether Conclusive.**—The Act does not make the certificate conclusive, although, as a matter of practice, it naturally carries very great weight. In *Dargie* v. *Dunbar* (1884), 11 Rettie (J.C.), 37, the majority of the Court of Justiciary in Scotland appear to have held that the opinion of the Somerset House analysts (expressed in a certificate) was inadmissible as evidence of the percentage of fat which milk from a Scotch cow ought to contain, but this view would certainly not be followed by an English court. See cases cited in note (*c*) to s. 21, *ante*, p. 74.

It has been decided in Scotland that the Somerset House certificate is not conclusive if there is substantial evidence on the other side. In *Fyfe* v. *Hamilton* (1894), 1 Adam, 484, which was a milk prosecution, the district analyst certified an abstraction of 15 per cent. of fat, but another analyst, on behalf of the defendant, certified that there had been no abstraction. The Somerset House analyst certified an abstraction of 26 per cent. The sheriff substitute acquitted the defendant, and the Court of Justiciary held that he was not bound to convict. A similar decision upon practically identical facts was given by the same court in *Todd* v. *Cochrane* (1901), 3 Adam, 357; 38 Sc. L. R. 801. It is probable that the King's Bench Division would take the same view.

23. *Appeal to Quarter Sessions.*—Any person who has been convicted of any offence punishable by any

Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace (*a*) [*which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognisance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded ; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognisance ; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper*].

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or

recorder (as the case may be) to decide such appeal, if made in such form and manner, and with such notices as are required by the said Petty Sessions Acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

Repeal.—The words in italics enclosed in square brackets are repealed by 47 & 48 Vict. c. 43, s. 4 (Summary Jurisdiction Act, 1884).

(*a*) **Appeals in Prosecutions by Commissioners of Customs.**—Section 1 of the Act of 1899 is to have effect " as if it were part of the Customs Consolidation Act, 1876 " (which contains no right of appeal). See sub-s. (2) of that section. By the last paragraph of s. 25 of the Act of 1899 offences under that Act (unless the context otherwise requires) are to be treated as offences under the Sale of Food and Drugs Acts. Under these circumstances in *Rex* v. *Otto Monsted, Limited*, [1906] 2 K. B. 456; 70 J. P. 435; 75 L. J. K. B. 629; 95 L. T. 526; 4 L. G. R. 942, it was held by Ridley and Darling, JJ. (*dissentiente* Bray, J.), that in a prosecution by the Commissioners of Customs under s. 1 there is no right of appeal to quarter sessions.

24. *Proof by Defendant of Exception or Provision.*—In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act (*a*), it shall be incumbent upon him to prove the same.

(*a*) See ss. 5, 6, 8, 25 of this Act; s. 6 of the Act of 1879; and s. 20 of the Act of 1899.

25. *Defendant to be Discharged if he Prove that he Bought the Article in the same state as sold, and with a Warranty* (*a*).—If the defendant in any prosecution under this Act (*b*) prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty (*c*) to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise (*d*), and that he sold it in the same state as when he purchased it (*e*), he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence (*f*).

(*a*) **Further Provisions.**—This section must be read in conjunction with s. 20 of the Act of 1899, *post*, p. 162, which contains further provisions as to the use of a warranty as a defence.

(*b*) **Offences to which the Section Relates.**—From the actual wording of the section, it would appear, at first sight, as though the warranty defence ought to be available in any prosecution under this Act. This, however, is clearly not so. For instance, no warranty could possibly be a defence to a prosecution for refusing to sell to an inspector; and in *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 65 J. P. 743; 70 L. J. K. B. 795; 85 L. T. 50; 20 Cox C. C. 18 (which, on this point, is not overruled by *Watts* v. *Stevens*, *post*, p. 87), BIGHAM, J., said that he did not think that the defence applied to offences under ss. 3, 4, and 9. It is suggested that the test is to see whether the wording of the section will fit the circumstances of the particular offence, or, in other words, whether there has been a sale to the prosecutor following upon a demand by him for an article of a particular nature, substance, and quality; if these essentials are not present, the wording of the section does not apply to the case. For instance, it is submitted that the warranty

defence would be inapplicable to a prosecution under the first part of s. 9 for "abstracting from an article of food any part of it," because the offence is not the sale, but the abstraction; but that it might be applicable to a prosecution under the latter part of the section for "selling the article so altered." This view has received some support from the judgments in *Kelly* v. *Lonsdale, infra.*

There is no difficulty with regard to offences created by the Act of 1879, or by the Margarine Act, for the Act of 1879 only creates one new offence (s. 4) to which no warranty could possibly apply, while the Margarine Act has a warranty section of its own (s. 7). The case of the Act of 1899, however, is not so simple. The present section in terms applies only to offences under the Act of 1875, but at the end of s. 25 of the Act of 1899, there are the words: "An offence under this Act shall be treated as an offence under the Sale of Food and Drugs Acts." It is not easy to see what the exact effect of these words is. In *Kelly* v. *Lonsdale & Co.*, [1906] 2 K. B. 486; 70 J. P. 441; 75 L. J. K. B. 822; 95 L. T. 427; 4 L. G. R. 949, it was held that the warranty defence does not apply to a prosecution under s. 1 for importing adulterated butter. The court appear to have arrived at their decision by the test suggested above, but there are passages in the judgments which suggest that the warranty defence does not apply to the Act of 1899 at all. But in *Dairy Supply Co., Limited* v. *Houghton* (1911), 76 J. P. 43, where a farmer sold milk to a company with a warranty, and the company resold to a customer with another warranty, and the company were prosecuted under s. 20 of the Act of 1899 for giving a false warranty, it was held that they were entitled to rely on the warranty given by the farmer. As regards the Act of 1907, it is suggested that the combined effect of s. 11 (2) of that Act and s. 12 of the Margarine Act is to incorporate the present section, but the fact that it was considered necessary to include special provisions as to warranties in s. 7 of the Margarine Act and s. 9 (3) of the Act of 1907 may militate against that view.

(*c*) **"Written Warranty."**—The question as to what constitutes a sufficient written warranty within the meaning of this section is by far the most difficult of any that have yet arisen under the Sale of Food and Drugs Acts. It has been

discussed in a great many cases, and upon several points the mind of the courts has fluctuated, so that it is impossible to state with accuracy what the law is at the present time. It is therefore deemed advisable in this note merely to set out the cases in order of date with cross references and observations. In considering the cases the following general rules of law with regard to warranties must be borne in mind: (1) Where goods are sold by description, the buyer is entitled to treat that description as a warranty that the goods are of the quality described (see Sale of Goods Act, 1893 (57 & 58 Vict. c. 71), ss. 11 (1) and 13)); (2) A warranty given after the contract of sale has been completed is generally void, for there is no consideration to support it. See *Roscorla* v. *Thomas* (1842), 3 Q. B. 234; 11 L. J. Q. B. 214.

In *Rook* v. *Hopley* (1878), L. R. 3 Ex. D. 209; 42 J. P. 551; 47 L. J. M. C. 118; 38 L. T. 649; 26 W. R. 663, which was a prosecution for selling lard containing upwards of 15 per cent. of water, the defendant proved that he sold the article in the same condition as it was when he bought it, and that when he purchased it he received an invoice in which it was described as "lard." The court held that the invoice was not a written warranty within s. 25, so as to discharge the defendant, and KELLY, C.B., said: "I cannot hold that this invoice contains anything more than a description which cannot be deemed to be a warranty"; while POLLOCK, B., added: "What is required by the statute is a writing expressing on the face of it that it is a warranty." It is submitted that in view of the more recent decisions these dicta would not hold good nowadays (see *Laidlaw* v. *Wilson*, *Hawkins* v. *Williams*, and *Bacon* v. *Callow Park Dairy Co.*, *infra*), from which it would appear that the invoice would now be treated as a warranty that the article sold was "lard." But it is not clear how far such a limited warranty would constitute a defence.

In *Harris* v. *May* (1883), 12 Q. B. D. 97; 48 J. P. 261; 53 L. J. M. C. 39, the appellant purchased milk under a written contract made with the farmer who supplied it, and who agreed to sell "new and pure milk each and every day for six months." The court held that this contract was not sufficient to protect him. Lord COLERIDGE, C.J., said: "It seems clear that the legislature meant that a person seeking to protect himself against the penalty, and wishing

to make himself perfectly safe in respect of the sale of a specific article, must show that he had a proper specific warranty in writing in respect of the article from the vendor. The appellant has not shown that. It is possible that he may have had a parol statement, amounting to a warranty, from his vendor each morning that the milk was supplied, but that would not be sufficient." His lordship also said: "I am of opinion that the contract relied on by the appellant is not a written warranty within the meaning of the Act." This case was discussed in *Laidlaw* v. *Wilson*, not followed in *Elliott* v. *Pilcher*, dissented from by Lord Alverstone, C.J., and Darling and Channell, JJ., in *Bacon* v. *Callow Park Dairy Co.* (though this dissent was explained and modified in *Watts* v. *Stevens* and *Evans* v. *Weatheritt*), and approved by Lord Alverstone, C.J., and Darling, J., in *Watts* v. *Stevens*, *post*, p. 87.

In *Farmers'*, *etc. Dairy Co.* v. *Stevenson* (1890), 55 J. P. 407; 60 L. J. M. C. 70; 63 L. T. 776; 17 Cox C. C. 201, which was a prosecution for selling milk from which cream had been abstracted, there was a written contract containing the words: "The vendor hereby warrants each and every supply of milk . . . to be pure, genuine and new milk, unadulterated and with all its cream on," and on each of the cans delivered there was a printed label with the words, "warranted genuine new milk with all its cream on," and the magistrates found as a fact that the milk in the can was delivered in pursuance of the contract. The High Court held that the seller had a good defence under s. 25, and Stephen, J., said: "In the agreement there was a written warranty that the milk to be delivered was to be pure, genuine, and new milk . . . and the fact that the milk was not to be delivered all at one time does not to my mind make any difference." See *Iorns* v. *Van Tromp*, *infra*, where this case is fully discussed by Cave, J., in his judgment.

The case of *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, appears, at first sight, to conflict with *Farmers'*, *etc. Dairy Co.* v. *Stevenson*, but in *Hotchin* v. *Hindmarsh* the question of warranty was only incidentally referred to, and the true ground of the decision was that there was no evidence to show that the seller sold the article in question

in the same state as when he purchased it or that he had no reason to believe that it had undergone any change. See notes (*d*) and (*e*) *infra*.

In *Elder* v. *Smithson* (1893), 57 J. P. 809, the respondent had sold lard which was adulterated with four per cent. of beef fat. His defence was that he had bought the lard from a wholesale merchant and that it was contained in a bladder on which was printed legibly " warranted pure star brand." The court (WILLS and WRIGHT, JJ.) held that the words on the bladder did not constitute a warranty. As to this see *Rook* v. *Hopley*, *supra*, and *Lindsay* v. *Rook*, *Iorns* v. *Van Tromp*, *Hawkins* v. *Williams*, and *Lewis* v. *Weatheritt*, *infra*, and *Irving* v. *Callow Park*, *post*, p. 164.

In *Laidlaw* v. *Wilson*, [1894] 1 Q. B. 74; 63 L. J. M. C. 37; 42 W. R. 78, a grocer bought lard from a manufacturer under the following contract: " We have this day sold to you three tons Kilvert's pure lard for delivery to end of January." Two barrels of lard were forwarded under the above contract accompanied by an invoice in which they were described as " Kilvert's pure bladdered lard." A portion of this lard was sold to a customer, and turned out to be adulterated. The court held that the grocer was protected by the contract, and CHARLES, J., said: " The respondent contends that the contract contained a written warranty that the lard should be pure. It is true that the contract does not in terms say that the purity of the lard is warranted, but, in my judgment, it is not necessary that the word 'warranted' should be actually used. To my mind it is enough if the language of the document imports a warranty, and shows an intention on the part of the vendor to warrant. It was, however, said on the part of the appellant that there were two cases which were opposed to that view. The first was *Rook* v. *Hopley* [*supra*]. But that case is distinguishable on two grounds. In the first place, the statement there was that the thing sold was lard simply; there was no statement of its purity. And secondly, the statement there, such as it was, was to be found in an invoice only. But the invoice was no part of the contract, and it is in the contract, and in the contract alone, that the warranty which the statute requires must be sought. I decide the present case upon the construction which is to be put, not upon the invoice of December 23rd, but on the contract of

December 17th. The other case relied upon by the appellant was *Harris* v. *May* [*supra*], where it was held that a written contract made on March 24th, whereby one F. agreed to deliver to the defendant eighty-six gallons of pure milk every day for six months, did not constitute a written warranty in respect of a specific can of milk delivered by F. on April 12th. There, no doubt, Lord COLERIDGE, at the commencement of his judgment, said that in his opinion the contract relied on by the defendant was not a written warranty within the meaning of the Act. But on looking at his judgment as a whole, I think that what he really meant was that it was not such a warranty as would cover the specific delivery of milk on April 12th, in the absence of some written evidence that that specific delivery was made under the contract. In the present case there is evidence that the particular parcel of lard was delivered under the contract, the delivery having been accompanied by an invoice which describes the lard in the same terms as those contained in the contract. The invoice, however, is material, not as itself containing a warranty of purity, but as earmarking the particular parcel as having been delivered under a contract in which a written warranty of purity was contained." WRIGHT, J., said: "The word 'pure' in the contract of December 17th amounts to an agreement as an essential part of the contract that the lard supplied should be pure, and that is, in my opinion, a sufficient warranty of its purity within the meaning of the section." This case was approved in *Watts* v. *Stevens*, *post*, p. 87.

In *Lindsay* v. *Rook* (1894), 58 J. P. 735; 63 L. J. M. C. 231, the defendant bought vinegar in a cask which had upon it a printed label bearing the words "Vinegar warranted unadulterated.—Grimble & Co., Limited, Cumberland Market, London," and the cask was delivered to her along with an invoice in which it was described as "Grimble's Vinegar." She afterwards sold it by retail in exactly the same state as she had received it from the manufacturers, and it proved to have been adulterated:—*Held*, that she was entitled to the protection afforded by s. 25. The judgments are very short, but it does appear that the court held that the label in itself constituted a sufficient warranty to satisfy the section, as to which see the next case and

Lewis v. *Weatheritt*, *infra*. *Lindsay* v. *Rook* was adversely commented on in *Jeynes* v. *Hindle*, *infra*.

In *Iorns* v. *Van Tromp* (1895), 59 J. P. 246 ; 64 L. J. M. C. 171 ; 72 L. T. 449 ; 18 Cox C. C. 132, a grocer sold ground ginger adulterated with 90 per cent. of exhausted or spent ginger. He had purchased it as "ground ginger" in canisters, and had no reason to believe it otherwise than genuine, either when he purchased or retailed it. He had received from his vendor an invoice in which it was described as "ground ginger," and each canister bore a printed label, "Warranted genuine pure ground ginger":—*Held*, that neither invoice nor label, together or separately, constituted a written warranty, so as to entitle the grocer to the protection afforded by s. 25 ; and CAVE, J., said : "*Laidlaw* v. *Wilson* [*supra*] was referred to in the argument as being in the appellant's favour, but when the judgments are read, it is plain that it governs the present case adversely to this contention. There there was a written contract for the delivery of pure lard, and it was held that if the document relied on amounted to a warranty, it was sufficient without the word 'warrant' or 'warranty' being expressly stated in the document. . . . Here there was no such written contract, and the justices have declined to look at the invoice as throwing light on the question of warranty, and they were perfectly right. Of course, there are some cases in which an invoice or label may be regarded in this way, as in *Farmers', etc. Dairy Co.* v. *Stevenson* [*supra*]. . . . But there there was a contract warranting the delivery of pure milk for a fixed period . . . it was not the label which contained the warranty ; all it did was to identify the milk. When there is a written warranty in the first instance, then a label such as appears on these canisters of ginger may be regarded, but not otherwise." And WRIGHT, J., said : "There must be some express individual representation in writing from the seller to the retail dealer, forming part of the contract to sell. . . . The representation . . . must be an essential term in the bargain." But see the next case, and *Bacon* v *Callow Park* and *Lewis* v. *Weatheritt*, *post*, pp. 87, 90.

In *Hawkins* v. *Williams* (1895), 59 J. P. 533, a grocer bought butter from a wholesale merchant. At the time of the sale an invoice was handed to him by the merchant, in

which the butter was described as " butter guaranteed pure average quality," and initialled by him. The butter turned out to be adulterated. The justices held that the invoice constituted a sufficient warranty to satisfy the section, and the court held that their finding was justified. Lord Russell of Killowen, C.J., said : " An invoice is often used as evidence of the sale itself. Therefore, I see no reason why it should not be evidence of a warranty at the time of sale. Here the natural conclusion from the fact that the invoice bears the date of the day of purchase, and contains the words ' guaranteed pure,' followed by initials, is that the vendor was giving that document as a written warranty in pursuance of a stipulation by the purchaser for that object." The point to be noted in this case is that the invoice was dated on the day of sale, and in fact contained the terms of the contract. In the course of the argument Charles, J., was careful to point out that in *Laidlaw* v. *Wilson* the invoice was dated five days after the purchase. The conclusion to be drawn from this case is that an invoice may constitute a sufficient warranty if it may be regarded as the actual contract of sale, but not otherwise. And see *Lewis* v. *Weatheritt, infra.*

In *Robertson* v. *Harris*, [1900] 2 Q. B. 117 ; 64 J. P. 565 ; 69 L. J. Q. B. 526 ; 82 L. T. 536 ; 48 W. R. 571 ; 19 Cox C. C. 495, a farmer entered into a written contract on January 20th, 1889, to sell to the defendant 1,000 gallons of milk weekly, " the milk to be pure new milk." On December 15th, 1899, one of the consignments of milk was found to be adulterated. There was nothing in writing to show that the warranty attached to this particular consignment. Ridley and Darling, JJ., held, following *Harris* v. *May*, *supra*, that the defendant was not protected by the warranty unless he could produce evidence in writing to show that the particular consignment was purchased under the warranty. This decision was dissented from in the next case, but approved in *Watts* v. *Stevens, infra.*

In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817 ; 65 J. P. 743 ; 70 L. J. K. B. 795 ; 85 L. T. 50 ; 20 Cox C. C. 18, the defendant, in January, 1897, entered into a verbal contract with a firm of dairymen for a daily supply of milk. In July, 1899, the firm at the defendant's request gave him the following warranty in writing : " We hereby warrant that each

and every supply of milk sent by us to you shall be new milk, unadulterated, and with all its cream." In July, 1900, a consignment of milk proved to be deficient in fat, but there was nothing in writing to show that the warranty applied to that particular consignment. BIGHAM and RIDLEY, JJ., held that the defendant was entitled to prove by oral evidence that the particular consignment was purchased under the warranty; that it was not necessary to show on the face of the warranty that it applied to the particular milk sold, but that the connection between the two might be shown by evidence; and that a specific warranty with each delivery of milk was not required. BIGHAM, J., considered that *Harris* v. *May* and *Laidlaw* v. *Wilson*, *supra*, were irreconcilable, and the court followed the latter case, and declined to follow *Harris* v. *May* and *Robertson* v. *Harris*. But in *Watts* v. *Stevens*, *infra*, the majority of the court held that *Elliott* v. *Pilcher* was wrong.

In *Bacon* v. *Callow Park Dairy Co., Limited* (1902), 66 J. P. 804; 87 L. T. 70; 18 T. L. R. 573, the defendants entered into a verbal contract with a farmer for the purchase of a daily supply of milk, and for a written warranty to be given with each churn. The churns were accordingly labelled "Warranted pure." One of the churns turned out to be adulterated. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the defendants were protected by the written warranty on the churn, and Lord ALVERSTONE, C.J., said that he doubted whether, having regard to the more recent cases, *Harris* v. *May* could be regarded as law. It should be observed that this case differs from *Elder* v. *Smithson* and *Iorns* v. *Van Tromp*, in which a label was held not to be a sufficient warranty in itself, inasmuch as here there was a contract to give a warranty by the label, and therefore there was a consideration for the warranty so given. And see *Lewis* v. *Weatheritt*, *post*, p. 90.

In *Watts* v. *Stevens*, [1906] 2 K. B. 323; 70 J. P. 418; 75 L. J. K. B. 828; 95 L. T. 200; 4 L. G. R. 821, a milkman made a verbal contract with a farmer for a periodical supply of milk in or about August, 1905. On August 5th, 1905, after the making of the contract, but before the delivery of any milk thereunder, the farmer gave him the following written warranty: "I guarantee that the milk supplied by

me to Mr. Stevens is perfectly pure and with all its cream as the cow gives it." On December 28th, 1905, a consignment of milk turned out to be adulterated. The justices found as a fact that the parties intended the written warranty to cover that consignment, but there was nothing in writing to connect them. The whole court held that a warranty may be good although it relates to goods not then in existence, but it was further held by Lord ALVERSTONE, C.J., and DARLING, J. (*dissentiente* RIDLEY, J.), that in the absence of any written evidence to connect the particular consignment with the warranty, the latter afforded no defence. In their judgments the majority of the court reviewed all the earlier cases on the point, approved *Harris* v. *May*, *Laidlaw* v. *Wilson*, and *Robertson* v. *Harris*, and stated that in their opinion *Elliott* v. *Pilcher* was wrong (so far as regards this question). *Watts* v. *Stevens* was distinguished in *Evans* v. *Weatheritt*, *infra*, and *Draper* v. *Newnham*, *post*, p. 90.

In *Evans* v. *Weatheritt*, [1907] 2 K. B. 80; 71 J. P. 228; 76 L. J. K. B. 628; 96 L. T. 641; 23 T. L. R. 424; 21 Cox C. C. 415; 5 L. G. R. 608, by a contract in writing, dated October 2nd, 1905, the appellant agreed to purchase from the Great Western and Metropolitan Dairies, Limited, the whole of the milk required for his dairy for twelve months. The contract contained the following clause: "All milk to be delivered by the vendors at the purchaser's address in a sweet, pure and saleable condition, and warranted by them pure with all its cream as received from the cow, but no responsibility will be taken by the vendors after delivery." On June 27th, 1906, a consignment under the contract was delivered, accompanied by a delivery note addressed to the appellant and commencing: "Please receive from the Great Western and Metropolitan Dairies, Limited," but containing no reference to the contract. The High Court, distinguishing *Watts* v. *Stevens*, held that the appellant was entitled to rely on the warranty. Lord ALVERSTONE, C.J., said: "It is not suggested that the appellant received milk from anyone but the Great Western and Metropolitan Dairies; he proved the receipt of this particular consignment from that company, and he produced the contract of October 2nd, 1905, which showed that all his milk came from that company's dairy. In my judgment

that document" (*i.e.*, the contract of October 2nd) "is in these circumstances sufficient on its face to show the requisite written connection between this consignment of milk and the warranty contained in the contract." And DARLING, J., said: "In *Watts* v. *Stevens* . . . this court held that . . . it was necessary to show some connection in writing between the warranty and the particular consignment of milk in question. But the court did not say that the contract itself might not supply that necessary connection." It is not easy to understand accurately the distinction here drawn. According to DARLING and A. T. LAWRENCE, JJ., it consisted in the fact that in *Watts* v. *Stevens* the warranty was given after the contract, and that it contained nothing on its face to show that it applied to more than one consignment; but if that were the real *ratio decidendi* it is suggested that the result of *Watts* v. *Stevens* would have followed as a matter of course, and would not have been inconsistent with *Elliott* v. *Pilcher*, and that consequently the elaborate review of earlier authorities would have been unnecessary. And if the delivery note is disregarded (as it was) it is difficult to see any real distinction between *Evans* v. *Weatheritt* and the two earlier cases of *Harris* v. *May* and *Robertson* v. *Harris* in which the opposite result followed, but which were both expressly approved in *Watts* v. *Stevens*. Evans' contract was for the supply of "the whole of the milk required for his dairy," and the contracts in the other cases did not forbid the purchaser to buy elsewhere. Lord ALVERSTONE, C.J., and DARLING, J., laid some stress on this, but where there is a contract for a periodical supply of milk and it is proved that the particular consignment was delivered by the particular contractor during the currency of the contract (as was the fact in all three cases) it is not easy to see the relevance of the fact that the purchaser might have bought elsewhere. *Evans* v. *Weatheritt* was followed in *Draper* v. *Newnham*, *post*, p. 90.

In *Rees* v. *Davis* (1908), 72 J. P. 375; 24 T. L. R. 735; 6 L. G. R. 1038, one Bainbridge sold milk to one Edwards under a warranty. Edwards resold part to the appellant under a written warranty that it was "in the same condition as when received and as warranted by Bainbridge, viz., pure new unskimmed milk." It was the practice for the

appellant to go to the station and there take possession of some of the churns consigned by Bainbridge to Edwards. Each churn bore a label "Warranted pure new and unskimmed milk: G. H. Bainbridge." The magistrate thought that there was not sufficient evidence in writing to connect the warranty with each particular churn, but the High Court held that there was. Lord ALVERSTONE, C.J., also intimated that a warranty on a churn label might perhaps be sufficient if it contained the names of receiver and sender, as to which point see the next case.

In *Lewis* v. *Weatheritt* (1909), 73 J. P. 164; 100 L. T. 367; 25 T. L. R. 226; 7 L. G. R. 502, the appellant had a written contract containing a warranty with one Carter for a daily supply of milk till March 31st, 1908. Each churn had a label: "To Mr. Lewis, 1 churn, 17 gallons, pure new milk from Carter's Creamery." After March 31st, 1908, there were negotiations as to the amount to be supplied in future, etc., but no new contract was ever entered into, and the old amount was supplied daily with the old label. The High Court held that the appellant was protected, and that after the end of the old contract there was a daily sale and on each sale a written warranty. The judgments as reported are not quite clear, but the court certainly appears to have considered that under the circumstances the label on the churn was a sufficient warranty, thus deciding the point left open in *Rees* v. *Davis*, *supra*. As to this, see *Rook* v. *Hopley*, *Elder* v. *Smithson*, *Lindsay* v. *Rook*, *Iorns* v. *Van Tromp*, and *Hawkins* v. *Williams*, *supra*, and *Dewey* v. *Faulkner*, *post*, p. 91, and *Irving* v. *Callow Park*, *post*, p. 164.

In *Draper* v. *Newnham* (1910), 74 J. P. 124; 102 L. T. 280; 8 L. G. R. 144, a farmer, who had supplied milk to a retailer continuously for several years, gave him the following written warranty: "I hereby guarantee and warrant that all milk supplied by me to you is of the nature, substance and quality demanded by law. And I give this warranty for the purposes of the Sale of Food and Drugs Act, 1899." The High Court, following *Evans* v. *Weatheritt*, *ante*, p. 88, and distinguishing *Watts* v. *Stevens*, *ante*, p. 87, held that there was sufficient evidence in the warranty itself to connect it with each subsequent consignment.

In *Jeynes* v. *Hindle*, [1921] 2 K. B. 581; 85 J. P. 121; 90 L. J. K. B. 603; 124 L. T. 670; 37 T. L. R. 454; 65 Sol. J.

397 ; 26 Cox C. C. 709 ; 19 L. G. R. 231, there was an oral contract for the sale of a dozen bottles of quinine wine, to be made according to the formula in the British Pharmacopœia. The wine was delivered with an invoice in which it was described as " orange quinine wine." Each bottle had a label describing the wine as " made according to the British Pharmacopœia." It was not made according to the formula in the British Pharmacopœia, and the seller was prosecuted. It was held that as the warranty (if any) was neither contained in the contract of sale, nor given afterwards in pursuance of a stipulation in the contract of sale, it afforded no defence.

In *Dewey* v. *Faulkner* (1922), 39 T. L. R. 130, there was a contract for the sale of " New milk." The churns were labelled " Guaranteed pure unskimmed milk with all its cream." It was held that the contract itself was not a warranty, and that there was nothing to connect it with the warranty on the churns, which was therefore valueless.

Limited Warranties.—In *Wilson* v. *Playle* (1903), 67 J. P. 263 ; 1 L. G. R. 870, which was a prosecution for selling milk containing seven per cent. of added water, the defendant relied upon a document as containing a warranty. It was in these terms : " I, A. Playle, agree to buy, and Messrs. F. and P. agree to sell, but without accepting any responsibility after delivery, about fifty-four Imperial gallons of pure milk every day up to March 31st, 1903." The milk was found to be adulterated after it had been delivered. The magistrate was of opinion that the document was a valid warranty, and afforded a defence, notwithstanding the words of limitation contained in it, and Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that he was right.

This case was followed in *Plowright* v. *Burrell*, [1913] 2 K. B. 362 ; 77 J. P. 245 ; 82 L. J. K. B. 571 ; 108 L. T. 1006 ; 23 Cox C. C. 438 ; 29 T. L. R. 398 ; 11 L. G. R. 457, where the warranty was that the milk was " pure, genuine, new milk, with all its cream, according to the conditions of the Food and Drugs Acts," but that " no responsibility is taken by " the seller " after delivery other than under the Food and Drugs Acts." And in *Jackling* v. *Carter* (1912), 76 J. P. 292 ; 107 L. T. 24 ; 23 Cox C. C. 54 ; 10 L. G. R. 632, the following written warranty : " The company

purchase all milk sold by them under a warranty of its purity by the farmers, and agree to put the same on rail, thoroughly well cooled over a refrigerator, and guarantee it as such up to the time of delivery," was held to be a valid warranty that the milk was pure.

By Whom Warranty must be Given.—In *Hargreaves* v. *Spackman* (1907), 72 J. P. 52; 98 L. T. 41; 24 T. L. R. 173; 21 Cox C. C. 541; 6 L. G. R. 145, it was held that in order to succeed in a defence of warranty the person relying upon it must have received it from his immediate vendor; but in the same case CHANNELL, J., intimated an opinion that if upon a resale the benefit of a warranty is assigned in writing to the purchaser he may be able to avail himself of it.

(*d*) **No Reason to Believe that the Article was Otherwise.**—In *Blaydon Co-operative Society* v. *Young* (1916), 80 J. P. 451; 86 L. J. K. B. 417; 115 L. T. 827; 61 Sol. J. 57; 25 Cox C. C. 580; 14 L. G. R. 1149, a prosecution for selling blackberry jelly not of the nature, substance, or quality, etc., the jelly contained at least two per cent. of apple pulp and a large proportion of apple juice. The seller had bought it under a warranty that it was "bramble jelly," and with a label on each pot "Finest quality Blackberry Jelly, prepared from the choicest fruit of the season and fruit juice." The magistrates found that the appellants were aware at the time of sale that the jelly was not of the nature, substance, or quality, etc., and that they were not protected by the warranty, and convicted. The court held that there was no evidence to support the finding; but intimated that if the magistrates had merely found that they were not satisfied that the appellants had no reason to believe that the jelly was otherwise, etc., the result might have been different.

(*e*) **In the Same State as when he Purchased it.**—It should further be noted that it is not sufficient to prove a warranty. The seller must also prove that he "purchased the article as the same in nature, substance, and quality as that demanded of him by the prosecutor . . . and that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it." See *Hotchin* v. *Hindmarsh*, *ante*, p. 82, and *Jones* v. *Bertram* (1894), 58 J. P. 116. In the latter case, the magistrates upon a defence under this section had

found for the defendant and dismissed the summons, but had neglected to find whether the milk was in the same state as when he received it, or not, and the High Court sent the case back to them for their decision upon the point. This case was followed in *Pugh* v. *Williams*, *infra*. And in *Hennen* v. *Long* (1904), 68 J. P. 237 ; 90 L. T. 387 ; 20 Cox C. C. 608 ; 2 L. G. R. 437, where a milk seller who had bought milk with a warranty added boric acid to it before reselling it, the High Court held that he could not rely on the warranty as a defence, although the boric acid was not relied upon as an adulteration.

In *Sanders* v. *Sadler* (1906), 71 J. P. 3 ; 95 L. T. 872 ; 5 L. G. R. 240, a dairyman bought milk with a warranty under a contract for delivery at a railway station. A consignment of milk arrived at the station at 4.20 a.m., but was not removed till after 5 a.m. The dairyman proved that the milk was in the same state as when he removed it, but could not prove in what state it was when it arrived. The High Court held that the purchase was completed at the time of removal and not at the time of arrival, and that, therefore, the dairyman could rely on the warranty. This case was distinguished in *Pugh* v. *Williams* (1917), 81 J. P. 159 ; 86 L. J. K. B. 1407 ; 117 L. T. 191 ; 25 Cox C. C. 768 ; 15 L. G. R. 573, where a milk dealer bought milk with a warranty from a farmer for periodical delivery at Kilburn Station. He left it about three hours at the station before removal. Shortly after removal a sample was taken and proved to be deficient in fat. At the hearing, the dealer gave no evidence that the milk had not been tampered with during the wait at the station ; and it was held that he was not protected by the warranty.

Hotchin v. *Hindmarsh*, *ante*, p. 82, also decided that the section affords no protection to the servant or agent of a principal who has obtained a warranty in cases where such servant or agent is prosecuted as seller. But this decision has now been set aside by s. 20 (4) of the Act of 1899, *post*, p. 162.

(*f*) **Notice of Defence.**—The last sentence of the section, though not in terms repealed, is now inoperative, as further and more stringent provisions are substituted for it by s. 20 (1) of the Act of 1899, *post*, p. 162.

26. *Application of Penalties.*—Every penalty imposed and recovered under this Act (*a*) shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

(*a*) **Extension to Margarine Act.**—The provisions of this section extend to the Margarine Act, and in the metropolis supersede s. 47 of the Metropolitan Police Courts Act, 1839. See *R.* v. *Titterton*, [1895] 2 Q. B. 61; 59 J. P. 327; 64 L. J. M. C. 202; 73 L. T. 345; 43 W. R. 603; 18 Cox C. C. 181.

27. *Forging Certificate or Warranty; Wilful Misapplication of Warranty; False Warranty; False Label.*—[*Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;*] (*a*)

Every person (*b*) who shall wilfully (*c*) apply to an article of food, or a drug, in any proceedings

under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty (*d*) not exceeding twenty pounds ;

[*Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;*] (*e*)

And every person (*b*) who shall wilfully (*c*) give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty (*d*) not exceeding twenty pounds.

Guilty Knowledge.—In every prosecution under this section guilty knowledge must be proved (*Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772 ; 61 J. P. 374 ; 66 L. J. Q. B. 569 ; 76 L. T. 624 ; 45 W. R. 527, *per* HAWKINS, J. ; *Taylor* v. *Nixon*, [1910] 2 I. R. 94, *per* GIBSON, J.). See further, however, note (*p*) to s. 20 of the Act of 1899, *post*, p. 167.

Certificate of Analyst.—In *R.* v. *Smith*, [1896] 1 Q. B. 596 ; 60 J. P. 372 ; 65 L. J. M. C. 104 ; 74 L. T. 348 ; 44 W. R. 492 ; 18 Cox C. C. 307, HAWKINS, J., seems to have thought that in prosecutions under this section the analyst's certificate could not be used as evidence and that the analyst himself must be called. See, however, the remarks upon this case in notes (*k*) and (*m*) to s. 20 of the Act of 1899, *post*, pp. 166, 167.

(*a*) **Repeal.**—The words in italics and square brackets are repealed by s. 20 of the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27). The penalty is now under ss. 3 and 4 of that Act.

(*b*) **Liability of Limited Company.**—It is submitted that a limited company can be convicted under this section, notwithstanding the word "wilfully." See *Chuter* v. *Freeth and Pocock, Limited*, and the other cases cited on p. 6.

(*c*) **"Wilfully."**—This means that the person accused "knows what he is doing and intends to do what he is doing and is a free agent" (*per* Bowen, L.J., in *Young and Harston's Contract, In re* (1885), 31 Ch. D. 168; 50 J. P. 245; 53 L. T. 837; 34 W. R. 84).

(*d*) **Penalty.**—By s. 17 of the Act of 1899 (*post*, p. 155), the penalty may be increased to £50 on a second, and to £100 on any subsequent conviction. The defendant may also be imprisoned in certain circumstances.

(*e*) **Repeal.**—The words in italics and square brackets are repealed by s. 27 of the Act of 1899, and re-enacted with additions by sub-s. (6) of s. 20 of the same Act (*post*, p. 163).

The cases bearing on this repealed clause are noted under s. 20 of the later Act.

28. *Proceedings by Indictment and Contracts not to be affected.*—Nothing in this Act contained shall affect the power of proceeding by indictment (*a*), or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he

purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

(*a*) **Proceedings by Indictment.**—For instances, see *R.* v. *Dixon* and the other cases quoted on p. 7, *ante*.

EXPENSES OF EXECUTING THE ACT.

29. *Expenses of Executing the Act.*—The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis (*a*), and otherwise as regards England, in counties by the county rate (*b*), and in boroughs by the borough fund or rate:

And as regards Ireland, in counties by the grand jury cess (*c*) and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess (*c*) shall be paid by the treasurer of such county; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same (*d*).

(*a*) The Metropolis Management Act, 1855.

(*b*) **Exceptions.**—Some quarter sessions boroughs which contribute to the general county rate are nevertheless exempt from contributing to the expenses of administering the Act

in the county. See Municipal Corporations Act, 1882 (45 & 46 Vict, c. 50), s. 152, and the note to s. 8 of the Act of 1879, *post*, p. 120.

(*c*) **"Grand Jury Cess."**—Now the county fund. See Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 47 (1).

(*d*) **Grand Jury.**—This provision is obsolete, the business of the grand jury having been transferred by s. 40 of the Act above referred to, to the county councils.

Special Provisions as to Tea.

30. *Tea to be examined by the Customs on Importation.*—[*From and after the first day of January, one thousand eight hundred and seventy-six*] (*a*) all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

(*a*) **Repeal.**—The words in italics and square brackets above from "From" down to "seventy-six" are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

31. *Definition of "Exhausted Tea."*—Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

32. *Provision for the Liberty of a Cinque Port.*—For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

33. *Application of the Act to Scotland.*—In the application of this Act to Scotland the following provisions shall have effect:

1. The term "misdemeanour" shall mean "a crime or offence":
2. The term "defendant" shall mean "defender" and include "respondent":
3. The term "information" shall include "complaint":
4. This Act shall be read and construed as if for the term "justices," wherever it occurs therein, the term "sheriff" were substituted:
5. The term "sheriff" shall include "sheriff substitute":
6. The term "borough" shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament:

7. The expenses of executing this Act shall be borne in Scotland, in counties, by the county general assessment, and in burghs, by the police assessment :

8. This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "one of her Majesty's Principal Secretaries of State" (*a*) were substituted :

9. All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person (*b*) seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of the Summary Procedure Act, 1864 (*c*), or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs :

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person (*b*) who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act :

Every penalty imposed and recovered under this Act shall be paid to the clerk of the court, and by him shall be accounted for and paid to the treasurer of the county

general assessment, or the police assessment of the burgh, as the sheriff shall direct:

10. [*Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff*] (*d*).

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same [*to the next circuit court, or where there are no circuit courts*] (*d*) to the High Court of Justiciary [*at Edinburgh*] (*d*), in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three (*e*), and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

(*a*) **Principal Secretary of State.**—Now the Local Government Board for Scotland. See the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), s. 5, and the Act of 1899, s. 23, *post*, p. 170.

(*b*) **Person.**—Notwithstanding s. 2 (1) of the Interpretation Act, 1889, the word "person" here does not include the corporation of a burgh, and therefore such a corporation cannot prosecute for a contravention of the Act (*Colquhoun* v. *Dumbarton Corporation*, [1907] Sess. Cas. (J.) 57; 5 Adam, 275). Apparently prosecutions ought to be in the name of the procurator fiscal or the sanitary inspector.

(*c*) Now the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. 7, c. 63).

(*d*) **Repeal.**—The words in italics and square brackets are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

(*e*) The Heritable Jurisdictions (Scotland) Act, 1746.

34. *Interpretation of Terms in Application of Act to Ireland.*—In the application of this Act to Ireland—

The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland" (*a*):

The term "county" shall include a county of a city and a county of a town not being a borough:

The term "assizes" shall, with respect to the county of Dublin, mean "presenting term":

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee:

The term "police constable" shall mean, with respect to the police district of Dublin Metropolis, constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

(*a*) The Municipal Corporations (Ireland) Act, 1840.

35. *Commencement of the Act.*—[*This Act shall commence on the first day of October, one thousand eight hundred and seventy-five.*]

This section is repealed by the Statute Law Revision (No. 2) Act, 1893.

36. *Short Title.*—This Act may be cited as "The Sale of Food and Drugs Act, 1875."

SCHEDULE. Sect. 18.

Form of Certificate.

To (*a*)

I, the undersigned, public analyst for the , do hereby certify that I received on the day of 18 from (*b*) , a sample of for analysis which then weighed (*c*)), and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations (*d*).

As witness my hand this day of .

A. B.,

at .

(*a*) Here insert the name of the person submitting the article for analysis.

(*b*) Here insert the name of the person delivering the sample.

(*c*) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

(*d*) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

Variations in Form of Certificate.—It is advisable, wherever possible, to adhere exactly to the prescribed form of certificate. The following cases show to what extent variations are permissible. It should be observed that the certificate of the analysts of the Government laboratory (see s. 22, *ante*, p. 75) need not be in the prescribed form (*Foot* v.

Findlay, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129). Some suggestions for forms of certificate in particular cases will be found on pp. 108, 109. It is a usual, and useful, plan to print at the foot of each certificate the special report referred to at the end of the notes to the official form, *supra*.

Weight of Sample.—This need not be stated unless such weight is material to the accuracy of the analysis (*Sneath* v. *Taylor*, [1901] 2 K. B. 376; 65 J. P. 548; 70 L. J. K. B. 872; 49 W. R. 719; and *Hunter* v. *Wintrup* (1904), 7 Fraser (J.C.), 22; 4 Adam, 471; 42 Sc. L. R. 277).

Articles Injurious to Health.—In a prosecution under s. 3 the certificate is sufficient if it complies with the form in the Schedule. It need not state that the article is injurious to health (*Hull* v. *Horsnell* (1904), 68 J. P. 591; 92 L. T. 81; 21 T. L. R. 32; 20 Cox C. C. 759; 2 L. G. R. 1280).

Articles Liable to Decomposition.—In *Peart* v. *Barstow* (1880), 44 J. P. 699, a case of adulteration of milk, decided at the Middlesex Quarter Sessions, the certificate did not specify whether any change had taken place in the constitution of the article to interfere with the analysis, but merely stated that "the sample was fresh when delivered, securely sealed, and marked A. 48":—*Held*, that a certificate is a condition precedent to a prosecution, that the certificate in this case was informal, and that although the analyst was called and gave evidence, there could be no conviction. This case, however, is not of binding authority. As to the question whether the certificate is a condition precedent to a prosecution, see notes to s. 20, *ante*, p. 70.

In *Hudson* v. *Bridge* (1903), 67 J. P. 186; 19 T. L. R. 369, which was a prosecution for selling vinegar of squills deficient in acetic acid, the certificate did not state whether any change had taken place in the constitution of the article. An attempt was made to cure this defect by the evidence of the analyst who was called at the trial. Acetic acid is liable to gradual decomposition if kept for a considerable time. WILLS and CHANNELL, JJ., expressed an opinion that the certificate was bad, and doubted whether the defect could be cured by the oral evidence of the analyst. The actual decision of the court, however, was based upon another point. See note (*e*) to s. 6, *ante*, p. 29.

And in *Hunter* v. *Wintrup* (1904), 7 Fraser (J.C.), 22; 4 Adam, 471; 42 Sc. L. R. 277, the Court of Justiciary held that in the case of a sample of butter the omission to state whether any change had taken place that would interfere with the analysis is fatal to a conviction.

Parts or Ingredients of Sample.—In *Bakewell* v. *Davis*, [1894] 1 Q. B. 296; 58 J. P. 228; 63 L. J. M. C. 93; 69 L. T. 832, a milk seller was charged with selling milk deficient in fat to the extent of 22 per cent. The analyst's certificate was as follows: "I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under: 22 per cent. of fat less than the natural. Observations: the abstraction of fat is a fraud, and may possibly be injurious to health":—*Held*, that this observation, though matter of opinion, did not invalidate the certificate (as to which see also *Gordon* v. *Love*, *post*, p. 108), and further that the certificate need not set out the constituent parts of the sample except in cases of adulteration. This case was followed in *Jenkins* v. *Naden*, *post*, p. 108; but it is not easy to reconcile it with *Newby* v. *Sims* and *Fortune* v. *Hanson*, *infra*.

In *Newby* v. *Sims*, [1894] 1 Q. B. 478; 58 J. P. 263; 63 L. J. M. C. 228; 70 L. T. 105, the respondent was charged, under s. 6 of the Act of 1879, with selling whisky adulterated with 13 per cent. of water in excess of the proper amount. The analyst's certificate ran as follows: "I find the sample contains an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the said sample is not a sample of genuine whisky." The court held that the certificate was too vague. As it stood it did not disclose any offence; for, for aught that appeared to the contrary, the analyst might not have known of the Act of 1879, which determines the amount of lawful admixture. It was impossible to tell what was the excess of water until it was known what was the quantity exceeded. The certificate ought to have stated the total amount of water found in the sample.

In *Fortune* v. *Hanson*, [1896] 1 Q. B. 202; 60 J. P. 88; 65 L. J. M. C. 71; 74 L. T. 145; 44 W. R. 431; 18 Cox C. C. 258, the prosecution was under s. 6 of this Act in respect of a sample of milk taken in the course of delivery under s. 3

of the Act of 1879. The analyst's certificate was as follows: "I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent. of added water to the prejudice of the purchaser" :—*Held*, that this certificate was bad as evidence of adulteration, because it did not state the constituent parts of the sample analysed, and that in such a case as this the constituent parts ought to be stated. In the course of his judgment, HAWKINS, J., said: "If the analyst found in the milk some material substance which ought not to be found in milk at all, it would be sufficient for the certificate to state that the sample . . . contained so much per cent. of foreign ingredient, but when the magistrates have to decide whether the sample contained . . . added water, the question becomes much more difficult, because water is to be found in milk in its most pure state . . . I think the magistrates are entitled to inquire, and the Legislature intended they should have a statement in such a case as this, of the parts of which the sample was composed. To say merely that a sample of milk contained five per cent. of added water is only to state the analyst's own opinion that water has been added. The magistrates have to exercise their own judgment on the question . . . they ought to be informed . . . what was the total percentage of water." And KENNEDY, J., said: "Where the thing said to be added is one of the constituents of the article analysed . . . the analyst . . . must state the facts on which he has come to his conclusion sufficiently to enable the magistrates to come to a conclusion themselves."

This last-mentioned case was distinguished in *Bridge* v. *Howard*, [1897] 1 Q. B. 80; 60 J. P. 790; 65 L. J. M. C. 229; 75 L. T. 300; 45 W. R. 78; 18 Cox C. C. 421, which was also a prosecution under s. 6 of this Act. The analyst's certificate was as follows: "I am of opinion that the sample contains the parts as under: milk, 94 per cent.; added water, 6 per cent. This opinion is based on the fact that the sample contained 7·97 solids not fat, whereas genuine milk contains not less than 8·5 solids not fat" :—*Held*, that the certificate was good, and KENNEDY, J., said: "What the analyst has done here has been, not only to state the percentage of added water, but also to give the scientific basis on which his conclusion rests; and therefore, I think that . . . the certi-

ficate in this case is good . . . The certificate differs from that in *Fortune* v. *Hanson*, because it gives the reasons for the analyst's conclusion, and on the information so given the party charged can, if he thinks proper, act and the justices can form a judgment."

In *Lee* v. *Bent* and *Barlow* v. *Noblett*, [1901] 2 K. B. 290 ; 65 J. P. 646 ; 70 L. J. K. B. 747 ; 84 L. T. 719 ; 49 W. R. 684, two beer-sellers were prosecuted under s. 6 for selling beer containing arsenic, and were convicted. The analyst certified in one case that the beer "contained arsenic," and in the other that it contained "a serious quantity of arsenic." Lord ALVERSTONE, C.J., and LAWRANCE and PHILLIMORE, JJ., held that the certificates were not sufficient, and Lord ALVERSTONE, C.J., said : "We are all of opinion that these two certificates are not sufficient. It is very important that the practice should be uniform, and we think it is clear that the certificate of the analyst must be a document in proper form, and that that certificate ought to contain in it sufficient materials to enable the magistrates to form a judgment on those materials whether the offence charged had been committed."

In *Findley* v. *Haas* (1903), 67 J. P. 198 ; 88 L. T. 465 ; 19 T. L. R. 353 ; 1 L. G. R. 377, which was a prosecution for selling watered brandy, the certificate was as follows : "I am of opinion that the sample contained the parts as under, or percentages of foreign ingredients as under. It has been reduced from 25 degrees under proof to 27·6 degrees under proof." The justices, on the authority of *Newby* v. *Sims*, *supra*, held that the certificate was not in proper form, since it did not state the percentages of pure spirit and water. But Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the certificate disclosed an offence and was sufficient. The distinction between the cases, of course, is that here the analyst showed that he knew the provisions of s. 6 of the Act of 1879, and stated how far the sample fell below the requirements of that section.

In *Bayley* v. *Cook* (1905), 69 J. P. 139 ; 92 L. T. 170 ; 53 W. R. 410 ; 20 Cox C. C. 779 ; 3 L. G. R. 304, the certificate stated : "Milk fat, 1·4 per cent. ; deficiency in milk fat, 53·4 per cent." It did not in terms state how much fat milk should contain, but this could be arrived at by an easy calculation from the figures given. The High Court held

that the certificate was good, but that the existence of the regulations of 1901 does not do away with the necessity for stating the standard, directly or impliedly, in the certificate. This case was followed in *Jenkins* v. *Naden*, *infra*.

In the Irish case of *Austin* v. *Dunshaughlin Guardians* (1911), 45 Ir. L. T. 213, a certificate was held sufficient which stated that a sample of butter " is composed almost entirely of fats other than butter," as this was equivalent to saying that it was not butter at all.

In *Robinson* v. *Newman* (1917), 81 J. P. 187 ; 86 L. J. K. B. 814 ; 117 L. T. 96 ; 25 Cox C. C. 749 ; 15 L. G. R. 475, a vinegar prosecution, the analyst, who was not required to be called, had certified that the sample contained 2·91 per cent. of acetic acid. " Observations :—Normal vinegar contains at least 4 per cent. of acetic acid. This sample, therefore, is deficient in acetic acid to the extent of 27·2 per cent. of the minimum quantity which normal vinegar contains. This is equivalent to the presence in the sample of 27·2 per cent. of excess water." The magistrates said that as there is no standard for acetic acid, the analyst had no right to make the observations, and dismissed the summons ; but the court held that they were wrong.

In *Jenkins* v. *Naden* (1919), 83 J. P. 154 ; 88 L. J. K. B. 1137 ; 121 L. T. 142 ; 35 T. L. R. 368 ; 26 Cox C. C. 410 ; 17 L. G. R. 324, a milk prosecution, the certificate did not set out the parts or percentages, etc., but merely stated : " I am of opinion that the said sample contained the parts as under, namely, 2·5 per cent. of fat. Compared with the limit of the Board of Agriculture it was deficient in fat to the extent of 16·67 per cent." The court held, following *Bakewell* v. *Davis* and *Bayley* v. *Cook*, *supra*, that as this was a charge of deficiency only, and not of adulteration, the certificate was sufficient.

Surplusage in Certificate.—Remarks in a certificate which may be regarded as mere surplusage do not invalidate it. See *Gordon* v. *Love*, [1911] S. C. (J.) 75 ; 48 Sc. L. R. 590, where an analysis of milk ran thus : " Solids, not fat, 7·35 per cent. ; Fat, 1·31 ; Water, 91·34 ; Total 100·00 ; Ash, ·59 " ; and *Bakewell* v. *Davis*, *ante*, p. 105.

Suggestions for Forms of Certificate.—There is sometimes a difficulty about the form of a certificate for milk which is deficient both in fat and non-fatty solids.

The following seems unobjectionable :—

I am of opinion that the said sample contained the parts as under :—

Milk	92
Added water	8
	100

It has also been deprived of fat to the extent of 8 per cent. These opinions are based on the facts that the sample contained only 7·75 per cent. of solids not fat and 2·53 per cent. of fat, whereas genuine milk should contain at least 8·5 per cent. of solids not fat, and milk containing 8 per cent. of added water should contain at least 2·76 per cent. of fat . . . etc.

A well-known public analyst uses the following form for diluted whisky :—

. . . the parts as under :—

Whisky 25 degrees under proof . .	78
Added water	22
	100

This opinion is based on the fact that the sample was 41·5 degrees under proof. To whisky of 25 degrees under proof the above-mentioned proportion of water must be added to reduce it to 41·5 degrees under proof. Genuine whisky should not be more than 25 degrees under proof . . . etc.

The following is a typical form of certificate in the case of a drug (tincture of iodine) :—

. . . the parts as under :—

Iodine by weight	3·52
Potassium iodide by weight. . .	2·70

in 100 fluid parts of the tincture.

The sample, therefore, contains excess of iodine to the extent of 40·8 per cent. and of potassium iodide to the extent of 8 per cent., since, according to the British Pharmacopœia, 1898, tincture of iodine should contain only 2·5 parts by weight of iodine and 2·5 parts by weight of potassium iodide in 100 fluid parts . . . etc.

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

(42 & 43 Vict. c. 30.)

An Act to Amend the Sale of Food and Drugs Act, 1875. [21st July 1879.]

Whereas conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act :

1. *Short Title.*—This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

2. *In Sale of Adulterated Articles no Defence to Allege Purchase for Analysis.*—In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or

drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

This section was rendered necessary by the decision of the Court of Justiciary in Scotland in *Davidson* v. *M'Leod* (1877), 42 J. P. 43; 5 Rettie (J.C.), 1; 3 Couper, 511, where it was held that an official purchaser, under s. 13 of the Act of 1875, buying samples for analysis and not for consumption or at his own expense, could not be prejudiced by the purchase, and that, consequently, no offence was created under s. 6 of the Act of 1875. The court also held that the words " nature, substance, and quality " in s. 6 could not be disjoined, and that it was necessary in order to secure a conviction that the article in question should be defective in all three respects. See notes to s. 6 of the Act of 1875, *ante*. Although the English courts did not follow this decision (see *Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233; 43 J. P. 431; 48 L. J. M. C. 97; 40 L. T. 252; 27 W. R. 487), the Act was thereby rendered practically inoperative in Scotland until the amending section was passed.

3. *Officer, Inspector, or Constable may Obtain a Sample of Milk* (*a*) *at the Place of Delivery to Submit to Analyst.*—Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable (*b*) under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery (*c*) any sample of any milk in course of delivery (*d*) to the purchaser or consignee in pursuance of any contract (*e*) for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the

same to be analysed (*f*), and the same shall be analysed, and proceedings shall be taken (*g*), and penalties on conviction be enforced in like manner in all respects, as if such officer, inspector, or constable had purchased the same from the seller or consignor (*h*) under section thirteen of the principal Act.

Further Provisions.—By Regulation VII. of the Milk and Cream Regulations, 1912, *post*, p. 225, further powers of taking samples of milk and cream before delivery are conferred upon local authorities and Local Government Board inspectors.

(*a*) **Extension to Other Articles.**—The provisions of this and the following section are now applied, by s. 14 of the Act of 1899, to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request, or with the consent, of the purchaser or consignee.

(*b*) **Who may Take Samples—Deputy.**—In *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, the High Court held that the officials named can take samples by deputy, thus overruling the contrary decision given at quarter sessions in *Holt* v. *Morris* (1893), 57 J. P. 441.

Private Person.—A private person cannot take a sample or proceed under this section (*Harris* v. *Williams* (1889), 6 T. L. R. 47).

Officers of Other Local Authorities.—Apparently this section can only be put in motion by the local authority within whose district the place of delivery is situated. In *McNair* v. *Cave*, [1903] 1 K. B. 24; 67 J. P. 50; 72 L. J. K. B. 26; 87 L. T. 680; 51 W. R. 112; 1 L. G. R. 28, a Derbyshire farmer was in the habit of supplying milk to a dairy in Westminster, the place of delivery being in St. Pancras. The Westminster inspector took a sample at the place of delivery and had it analysed by the Westminster

analyst. It turned out to contain 21 per cent. of added water, so proceedings were taken against the farmer. Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the inspector had no power under the section to take samples in any place outside his own district.

(*c*) **"Place of Delivery."**—Under certain circumstances the question what is the actual place of delivery becomes a somewhat difficult one. In *Filshie* v. *Evington*, [1892] 2 Q. B. 200; 56 J. P. 312; 66 L. T. 199; 40 W. R. 380; 17 Cox C. C. 481, a dairyman who lived at Castle Donington contracted with a dairy company under an agreement, which was contained in a printed form, for the sale to them of milk from his dairy to be delivered in London or at such other station as the purchasers might from time to time appoint. The carriage of the milk from Castle Donington was to be paid by the purchasers. The purchasers appointed Hull as a station for the delivery of milk under the contract, and the dairyman consigned milk from Castle Donington to the purchasers at Hull. Immediately upon its arrival at Hull, and before possession was taken of it by the purchasers, a sample of it was taken by an inspector, which was found to be adulterated. It was contended on behalf of the dairyman that Castle Donington, and not Hull, was the place of delivery, on the ground that there was a provision in the contract for the payment of the carriage by the purchasers between Castle Donington and Hull; but it was held that, in spite of this provision, Hull was the place of delivery within the meaning of the section. A similar decision was given in *Lush* v. *Wilson* (1890), 54 J. P. 73, which was an appeal to quarter sessions. In that case there was a verbal agreement between a farmer and a retail milk seller that a certain quantity of milk should be delivered to the latter every day. The first deliveries were made at Basingstoke, but eventually the milk was sent on every day to Reading, the milk seller paying the carriage from Basingstoke. A sample was taken at Reading, and a conviction was ultimately obtained, and upheld in spite of the contention that Basingstoke and not Reading was the "place of delivery." See also *McNair* v. *Cave* in note (*b*), *ante*.

(*d*) **"In Course of Delivery."**—A sample may not be taken while the article is in transit, or after delivery of the article

has been completed. In *Semple* v. *Dunbar* (1904), 6 Fraser (J.C.), 65; 4 Adam, 399; 41 Sc. L. R. 858, a dairyman's servant, in the presence of an inspector, took milk from his cart in a can and passed it into empty cans belonging to the purchaser in the purchaser's shop. The inspector immediately took samples from the purchaser's cans in the presence of the dairyman's servant. The Court of Justiciary held that the milk from which the samples were taken was "in course of delivery."

In *Helliwell* v. *Haskins* (1911), 75 J. P. 435; 105 L. T. 438; 27 T. L. R. 463; 9 L. G. R. 1060, an inspector saw milk being delivered to a woman at her door by pouring it from a can into a jug which she held in her hand. She went into the house and shut the door; the inspector immediately knocked at the door, which was opened, and saw the woman still holding the jug, from which he took a sample. The justices found that delivery was complete, and therefore the sample was not taken "in course of delivery," and PICKFORD and LUSH, JJ. (*dissentiente* Lord ALVERSTONE, C.J.), held that there was evidence to support the finding, though, apparently, they themselves would have found the other way.

The above cases were followed in *Cox* v. *Evans*, [1917] 1 K. B. 275; 81 J. P. 53; 86 L. J. K. B. 539; 115 L. T. 779; 25 Cox C. C. 564; 14 L. G. R. 1178, in which the court said that the question whether a sample is taken "in course of delivery" is one of degree; and the decision of the magistrates will not be interfered with if it can possibly be supported on the facts. In that case the contract stated that "arrival of the milk at Briton Ferry shall constitute delivery." On its arrival at Briton Ferry the police took possession of it and prevented the consignee from taking possession of it for twenty minutes, until the arrival of the inspector, when a sample was taken. The magistrates found that the sample was taken in course of delivery, and their finding was upheld by the court.

(*e*) **"Contract."**—In *Phelan* v. *Rorke* (1883), 17 Ir. L. T. 649, a milkman was hawking milk from door to door. While he was pouring some milk into a customer's jug an inspector came up and demanded a sample, which was refused. There was no evidence of any contract except as above, but the Exchequer Division held that the milk was being

delivered "in pursuance of a contract," and that the milkman was rightly convicted of an offence under s. 4, *infra*.

(*f*) **Formalities to be Observed.**—As to whether, in procuring a sample under this section, it is necessary to comply with s. 14 of the Act of 1875, see note (*a*) to that section at p. 55, *ante*.

By s. 10 of the Act of 1899 (*post*, p. 151), if the article sampled is milk, margarine, or margarine-cheese, a portion of the sample must be forwarded to the consignor if his name and address appear on the can or package containing the article sampled.

In *Sandys* v. *Jackson* (1905), 69 J. P. 171; 92 L. T. 646; 3 L. G. R. 285, an inspector took samples of milk at the place of delivery, saying: "I am an inspector and require to take samples from the churns," to which the milkman made no reply. The milk turned out to be adulterated, but the justices (on the authority of *Lane* v. *Collins*, *ante*, p. 24) dismissed the summons on the ground that the inspector had not asked for milk, and had got what he asked for, and the High Court upheld their decision, saying that there was not a sufficient request for milk to support an information under s. 6 of the Act of 1875. The case is briefly reported, and it does not appear that the attention of the court was directed to the Act of 1879 at all. If it is right as reported it would go far to render the present section inoperative, for it would seem to follow that if an inspector asks for milk and the milkman says: "This is skim milk," the latter must be acquitted, even though he is delivering it to his purchaser as new milk. The cases of *Kirk* v. *Coates* and *Frew* v. *Gunning* (*ante*, p. 19), which, at first sight, appear to support *Sandys* v. *Jackson*, differ from it in that the milk was not purchased in course of delivery; and the language of the judgment in *French* v *Card*, *ante*, p. 67, although not strictly necessary to the decision, is strongly opposed to this construction of the section.

Samples, How to be Taken.—See s. 14 of the Act of 1875 and the notes thereto; s. 10 of the Act of 1899, *post*, p. 151, and the official circulars on pp. 259, 266, 267, of the Appendix.

In *Crawford* v. *Harding*, [1907] Sess. Cas. (J.) 11; 5 Adam,

185, a farmer delivered to a dairyman under a contract twenty-two gallons of milk contained in two cans of eight gallons each and one of six gallons. The two eight-gallon cans and four gallons out of the third can were emptied into one vessel, and the remaining two gallons into another. The inspector took samples of the two vessels, and the two gallons turned out to contain 2·8 per cent. of fat and the twenty gallons 3·05 per cent. There was no evidence either way as to whether the six-gallon can had stood long enough for the cream to rise up and be poured into the large vessel. The Court of Justiciary held that the sample from the two gallons was not a fair sample of the contents of the six-gallon can.

In *Lamont* v. *Rodger*, [1911] Sess. Cas. (J.) 24, a consignment of forty-two gallons of milk was being delivered in six barrels of different sizes. Five samples were taken in course of delivery, viz., separate samples from four barrels and one sample from two barrels mixed. The five samples were analysed separately, and the results averaged; and it was held that this was a fair way of sampling.

(*g*) **Proceedings.**—For forms of information and summons, see *post*, pp. 312, 314.

Separate Offences.—There can be separate informations laid in respect of samples taken from more than one can. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304; 55 J. P. 726; 60 L. J. M. C. 143; 65 L. T. 82; 39 W. R. 525; 17 Cox C. C. 322, an inspector procured a sample from each of five cans in the course of delivery, and, upon its being found that there was a deficiency of cream in two of the samples submitted to analysis, laid two separate informations in respect of them:—*Held*, that the procuring of each sample was a separate transaction, and that the milk seller had committed a separate offence in respect of each can which was deficient, and that, therefore, the two informations were properly laid and that there could be two convictions.

But in *Telford* v. *Fyfe*, [1908] Sess. Cas. (J.) 83, the Court of Justiciary in Scotland strongly dissented from the above decision. There the appellant had a contract to deliver a large amount of milk daily to a hospital, which he brought in sixteen cans and emptied them all into a large receptacle at

the hospital. An inspector took samples out of fourteen of the cans, and finding them all below the standard, charged the appellant with fourteen separate offences. It was held that the delivery of the sixteen cans was one transaction and one act, that the samples ought to have been mixed before analysis and only one offence charged. See also *Lamont* v. *Rodger*, *ante*, p. 116, and the cases cited in notes (*h*) and (*i*) to s. 14 of the Act of 1875, *ante*, pp. 59, 60.

In *Fecitt* v. *Walsh* the court further held that on the summons regarding the two bad samples the defendant was not entitled to give evidence regarding the three good ones, as they were not relevant to the issues to be tried.

In *Brady* v. *Canty* (1917), 51 Ir. L. T. 176, a milk seller in County Cork started off on his rounds with a can of watered milk, and the county inspector took a sample. He then crossed the boundary into the borough of Cork, and the borough inspector took a sample out of the same can. The analyst certified that both samples were adulterated, and the King's Bench Division in Ireland held that the milkman had committed two separate offences, and was liable to two separate fines.

(*h*) **Seller or Consignor.**—The person to be prosecuted is the seller or consignor himself. If the summons alleges a sale by the consignor "by the hands of A. B., his servant or agent," and it turns out that A. B. was not his servant or agent for sale but merely a carrier, there is a technical defect in the summons, but this defect being a mere variance is cured by s. 1 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Hiett* v. *Ward* (1894), 58 J. P. 461; 70 L. T. 374; 10 T. L. R. 284).

4. *Penalty for Refusing to give Milk* (*a*) *for Analysis.*—The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty (*b*) not exceeding ten pounds.

(*a*) **Extension to Other Articles.**—The provisions of this and the preceding section are now applied by s. 14 of the Act of 1899 (*post*, p. 153) to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request or with the consent of the purchaser or consignee.

(*b*) **Penalty.**—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899, *post*, p. 155.

5. *Sale in Streets, etc.*—Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

See notes to s. 17 of the principal Act, *ante*, p. 64.

6. *Reduction of Spirit Allowed.*—[*In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.*]

This section is repealed by s. 10 of the Licensing Act, 1921, which fixes a minimum strength of 35 degrees under proof for brandy, whisky, and rum, as well as for gin. See p. 188, *post*.

Prior to the passing of the Act of 1879, there existed, under the principal Act, considerable diversity of practice among public analysts with respect to the strength below which they deemed spirits adulterated or unduly watered. The object of the section was to lay down fair and reasonable standards of strength, and thereby establish uniformity of practice in the application of s. 6 of the principal Act to the sale of spirits throughout the kingdom. This legislation was hastened by the decisions which were given in *Pashler* v.

Stevenitt (1876), 41 J. P. 136; 35 L. T. 862 (*ante*, p. 22), and in *Webb* v. *Knight* (1877), 2 Q. B. D. 530; 41 J. P. 726; 46 L. J. M. C. 264; 36 L. T. 791; 26 W. R. 14. This section does not prevent the seller from availing himself of any other defence that he may have. Thus if spirits are sold diluted beyond the limit allowed, the seller cannot be convicted if he draws the attention of the purchaser, either verbally or by a notice, at the time of the sale, to the extent of the dilution, since the purchaser would be held to have obtained an article of the nature, substance, and quality demanded by him. See *Gage* v. *Elsey*; *Sandys* v. *Small*, and the other cases cited in note (*c*) to s. 6 of the Act of 1875, *ante*, p. 14.

Unless clear and unequivocal notice is given to the purchaser at the time of sale, the minimum applies to proprietary spirits sold under a special name and label just as much as to spirits sold simply as "brandy," "whisky," etc. See *Wilson and McPhee* v. *Wilson* (1903), 68 J. P. 175; 6 Fraser (J.C.), 10; 4 Adam, 310; 41 Sc. L. R. 195.

7. *Extension of Meaning of "County."*—Every liberty having a separate court of quarter sessions, except a liberty of a cinque port (*a*), shall be deemed to be a county within the meaning of the said Act.

(*a*) See s. 32 of the principal Act, *ante*, p. 99.

8. *Quarter Sessions Boroughs not to Contribute to County Analyst.*—[*The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporations Act*, 1835, *to be sent by him to such town council.*]

Repeal and Re-enactment.—The above section is repealed by s. 5 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), but is in effect re-enacted by s. 152 of the former Act.

9. *Provision for Boroughs with Separate Police.*—The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county (*a*) the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

(*a*) **County Justices.**—Now the county council (Local Government Act, 1888).

10. *Special Provision as to Time for Proceedings.*—[*In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the*

name of the prosecutor, shall be stated on the summons and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.]

Repeal and Re-enactment.—This section is repealed by s. 27 of the Act of 1899, but re-enacted with some alterations by s. 19 of the same Act, *post*, p. 156.

THE MARGARINE ACT, 1887.

(50 & 51 Vict. c. 29.)

An Act for the better Prevention of the Fraudulent Sale of Margarine. [23rd August, 1887.]

[*Whereas it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances :*

Be it therefore enacted, etc.]

Repealed by the Statute Law Revision Act, 1908.

1. *Short Title.*—This Act may be cited as the Margarine Act, 1887.

2. *Commencement of Act.*—[*This Act shall come into operation on the first day of January one thousand eight hundred and eighty-eight.*]

Repealed by the Statute Law Revision Act, 1908.

3. *Definition.*—The word "butter" shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

[*The word "margarine" (a) shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not (b),*] and no such substance shall be lawfully sold, except under the name of margarine (*c*), and under the conditions set forth in this Act.

Margarine-cheese.—For definition of "cheese" and "margarine-cheese," see s. 25 of the Act of 1899, *post*, p. 170.

(*a*) **"Margarine."**—The two following cases illustrate this definition: In *Burton* v. *Mattinson* (1902), 66 J. P. 628; 86 L. T. 770, the purchaser had asked for margarine and had obtained margarine which contained 21 per cent. of water. The analyst certified that this was at least 5 per cent. more water than margarine should contain. The seller argued that by this definition the word "margarine" means all substances prepared in imitation of butter, and that this substance was an imitation of butter, and was therefore margarine; but Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the substance sold was not margarine, but margarine and water, and that the justices had been right in convicting the seller of an offence under s. 6 of the Act of 1875. This case was followed in *Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031. In *Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 66 J. P. 790; 87 L. T. 67, Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that "Pearks' Butter" (a mixture of butter and milk) is not margarine within this definition, and therefore may be sold, notwithstanding s. 8 of the Act of 1899, *post*, p. 149, although containing more than 10 per cent. of butter fat. But the Act of 1907 now imposes special restrictions upon the sale of such substances.

"Nut cream butter," an article prepared in imitation of butter, but containing no animal fat, and unknown at the time of the passing of the Margarine Act, is "margarine" within the definition (*Wilkinson* v. *Alton* (1908), 72 J. P. 252; 99 L. T. 119; 6 L. G. R. 544).

(*b*) **Repeal.**—A new definition of margarine is substituted by s. 13 of the Act of 1907, *post*, p. 187. The old definition is not in terms repealed, but the effect is presumably the same.

(*c*) **"Under the Name of Margarine."—Fancy Names.**—This does not prevent the sale of margarine under a fancy name, provided that clear notice is given to the purchaser that the article is really margarine. Thus in *Tanner* v. *Dyball* (1906), 70 J. P. 279; 94 L. T. 539; 21 Cox C. C. 123; 4 L. G. R. 506, an inspector asked for half a pound of

" Marvo " (a form of margarine), and was served from a mass labelled " Margarine." The half-pound was wrapped in a paper labelled " Margarine," and inside the wrapper was a printed slip : " Marvo, the new butter substitute, equal in flavour to the finest dairy butter. To comply with the provisions of the Food and Drugs Acts is sold as margarine." The High Court held that no offence had been committed. This case was followed in *Keeloma Dairy Co., Limited* v. *Jones* (1906), 70 J. P. 533 ; 5 L. G. R. 246, where an inspector asked for half a pound of " Keeloma " (a sort of margarine). He did not see the bulk, or his parcel until it had been wrapped up. It was given him in a plain brown paper wrapper, underneath which was a second wrapper with the word " Margarine," and inside the second wrapper was a printed label : " Keeloma, the only perfect substitute for butter."[2] Inside the shop were exhibited two notices : (1) " If you ask for butter, you will be served with one of our new butter substitutes " ; (2) " Only Keeloma and Overweight, the new butter substitutes, sold here, and to comply with the Food and Drugs Acts are sold under the name of margarine." It should be noted that the summons was not taken out under the label section (s. 6, *infra*). See also *Pearks* v. *Houghton*, *ante*, pp. 17, 38.

But ss. 8—10 of the Act of 1907 impose restrictions upon the use of such fancy names.

4. *Penalty.*—Every person dealing in margarine (*a*), whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding twenty pounds, and for the second offence to a fine not exceeding fifty pounds, and for the third or any subsequent offence to a fine not exceeding one hundred pounds (*b*).

(*a*) Or margarine-cheese.—See s. 5 of the Act of 1899. For penalty for selling margarine containing more than 10 per cent. of butter fat, see s. 8 of the Act of 1899.

(*b*) By s. 17 of the Act of 1899 (*post*, p. 155) the offender may also be imprisoned in certain circumstances.

5. *Exemption from Penalty.*—Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

6. *Marking of Cases.*—Every person dealing in margarine (*a*) in the manner described in the preceding section (*b*) shall conform to the following regulations:

Every package (*c*), whether open or closed, and containing margarine (*a*), shall be branded or durably marked "Margarine" (*a*) on the top, bottom, and sides, in printed capital letters, not less than three quarters of an inch square; and if such margarine (*a*) be exposed for sale (*d*), by retail (*e*), there shall be attached to each parcel (*c*) thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label (*f*) marked in printed capital letters not less than one and a half inches square, "Margarine" (*a*); and every person selling margarine (*a*) by retail (*e*), save in a pack-

age (*c*) duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in [*or with*] (*g*) a paper wrapper (*h*), on which shall be printed in capital letters, [*not less than a quarter of an inch square,*] (*i*) " Margarine " (*a*).

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **" The preceding Section."**—Presumably s. 4.

(*c*) **" Package."**—**" Parcel."**—In *McNair* v. *Horan* (1904), 68 J. P. 518; 91 L. T. 555; 20 Cox C. C. 729; 2 L. G. R. 1239, it was held that a tub of margarine standing at the back of a counter from which margarine is scooped and supplied to customers is a " package," and must be labelled. In *Maguire* v. *Porter*, [1905] 2 I. R. 147, margarine was exposed for sale by retail in an open butt branded " Margarine " on the bottom and side, from which it was scooped as required by customers. The King's Bench Division in Ireland held that the butt was a " parcel," and that a label ought to have been attached to it. In *Parkinson* v. *McNair* (1905), 69 J. P. 399; 93 L. T. 553; 21 Cox C. C. 42; 3 L. G. R. 982, six pieces of margarine of 1 lb. each, and each partly wrapped in paper, were piled upon each other in a pyramid in a shop window. One margarine label was put upon the whole heap (on the bottom pieces). An inspector bought the top piece. The justices held that the six pieces formed one " parcel," and that that parcel was properly labelled, and the High Court refused to disturb their decision. See also *Wheat* v. *Brown*, *post*.

(*d*) **" Exposed for Sale."**—In *Crane* v. *Lawrence* (1890), 25 Q. B. D. 152; 54 J. P. 471; 59 L. J. M. C. 110; 63 L. T. 197; 38 W. R. 620, an inspector was served with a portion of margarine cut off a parcel of the substance which was lying on the counter concealed by a screen in such a manner as to be invisible to a customer in the shop. The portion so handed to the inspector was wrapped in the wrapper required by the section. The Divisional Court held that the parcel of margarine so concealed by the screen was not " exposed for sale " within the meaning of the section, and, therefore, needed no label.

In *Wheat* v. *Brown*, [1892] 1 Q. B. 418; 56 J. P. 153; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462, there was a notice in a shop window advertising "Danish butter." An inspector went in and asked for some. On the counter there was a heap of paper parcels, each of which had the word "Margarine" printed on it. One of these was handed to the inspector, and was found to contain margarine. The shopkeeper was summoned for neglecting to attach to the heap the label required by the section, but the Bench dismissed the summons, holding, on the authority of *Crane* v. *Lawrence*, that the margarine being wrapped in paper, and, therefore, invisible to the purchaser, was not "exposed for sale" within the meaning of the section. The Divisional Court reversed this decision on the ground that the justices had taken an erroneous view of *Crane* v. *Lawrence*. WRIGHT, J., said: "I entirely agree with the decision in *Crane* v. *Lawrence*, which was, in effect, that there was no exposure for sale when margarine was stored in a back room or cellar. The decision is simply that margarine which cannot in any sense be seen by the purchaser is not exposed for sale. In this case, the justices refused to convict the defendant upon the ground that the second part of s. 6 does not apply to margarine which is wrapped up in paper. That, in my opinion, is a wrong view of the section. The expression 'exposed for sale' is a well-understood term, and cannot be limited so as to mean only 'exposed to view.'" See also *Parkinson* v. *McNair*, *ante*, p. 126, and *McNair* v. *Terroni*, *ante*, p. 66.

(*e*) **"By Retail."**—This does not apply to sales of margarine for consumption on the premises. In *Moore* v. *Pearce's Dining and Refreshment Rooms, Limited*, [1895] 2 Q. B. 657; 59 J. P. 805; 65 L. J. M. C. 7; 73 L. T. 400; 44 W. R. 94; 18 Cox C. C. 196, the proprietors of an eating-house sold to their customers slices of bread spread with a mixture of butter and margarine, and also haddocks with a piece of the mixture on each, cut from a lump of the mixture kept on the shelf. The sales were for consumption on the premises only. There were no margarine labels or wrappers on the slices or on the lump of mixture, but there were conspicuous notices hanging over the plates of slices calling attention to the composition of the mixture. The court held that no offence had been committed under this section, and

Lord RUSSELL OF KILLOWEN, C.J., said: "The question comes to this: was the case one in which margarine was exposed for sale by retail within the meaning of s. 6? In order to arrive at a conclusion as to this, one must read the concluding portion of the section. . . . That shows what the character of the sale intended to be dealt with by the section is; and it is perfectly obvious that the machinery provided by the section is inapplicable to the course of business as it is carried on at this establishment. It would be absurd to apply the provision as to using a wrapper to each separate piece of margarine when spread on the bread or used with the haddock."

Wholesale.—For wholesale sales of margarine-cheese, see s. 5 of the Act of 1899, *post*, p. 146.

(*f*) **"Label."**—By s. 6 (1) of the Act of 1899: "Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto."

(*g*) **Repeal.**—The words in italics and square brackets are repealed by s. 6 (3) of the Act of 1899, and again by s. 27 of the same Act.

(*h*) **"Wrapper."**—The question has arisen as to whether the wrapper referred to must be the outside wrapper or not. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, margarine was sold in wrappers duly marked "margarine," but before delivery to the purchaser a second wrapper was put on which concealed the first one. This was held (before the repeal of the words "or with") to be no infringement of the section. But in the later case of *Toler* v. *Bischop* (1895), 60 J. P. 9; 65 L. J. M. C. 4; 75 L. T. 403; 18 Cox C. C. 202, Lord RUSSELL OF KILLOWEN, C.J., and CAVE, J., although the point did not actually arise in the case, expressed a strong opinion that it is the outside wrapper which should be marked; and the judgment of Lord ALVERSTONE, C.J., in *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111; 10 L. G. R. 127, is to the same effect. See also note (*b*) to s. 8 of the Act of 1875, *ante*, p. 37. At first sight the

case of *Keeloma Dairy Co., Limited* v. *Jones* (1906), 70 J. P. 533; 5 L. G. R. 246, seems to support the decision in *World's Tea Co.* v. *Gardner*, but the summons there was under s. 3 and not under this section, so that the point did not really arise.

Toler v. *Bischop* also shows that the word " wrapper " in the section bears a very wide meaning. In that case, a pound of margarine was sold in a cardboard box, to which a folded paper (containing an advertisement of margarine) was attached by a paper band. The word " margarine " in letters of the required size was printed partly on the box, partly on the paper, and partly on the band :—*Held*, that the box, paper and band together constituted a wrapper within the meaning of the section :—*Held*, further, that the box was not a " package " within the meaning of the first part of the section, and the court seemed to be of opinion that that part of the section does not apply to sales by retail.

(*i*) **Substituted Provision.**—The words in italics and square brackets are repealed by s. 27 of the Act of 1899; and s. 6 (2) of that Act, *post*, p. 147, says that the letters must be capital block letters not less than half an inch long and distinctly legible; and provides that no other printed matter shall appear on the wrapper.

7. *Presumption against Vendor.*—Every person dealing with, selling, or exposing, or offering for sale (*a*), or having in his possession for the purpose of sale, any quantity of margarine (*b*) contrary to the provisions of this Act, shall be liable to conviction for an offence (*c*) against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter (*d*), and with a written warranty or invoice (*e*) to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter (*d*), and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but

shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence (*f*).

(*a*) **Offering for Sale.**—An offer to sell is not an offering for sale. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, a handbill offering to every purchaser of "Kylos Creamery" (a preparation of margarine) a bonus of one pound on every two pounds purchased was held not to be an "offering for sale" although it was an offer to sell.

(*b*) Or margarine-cheese (s. 5 of the Act of 1899).

(*c*) **Guilty Knowledge.**—In *Fitzgerald* v. *Leonard* (1893), 32 L. R. Ir. 675, the Irish Queen's Bench Division held that guilty knowledge on the part of the defendant is necessary to complete an offence under the Act, and that s. 7 merely throws upon the defendant the burden of proving the absence of such guilty knowledge. But it is very improbable that this view would be taken in England. See *Betts* v. *Armstead* (1888), 20 Q. B. D. 771; 52 J. P. 471; 57 L. J M. C. 100; 58 L. T. 811; 36 W. R. 720; 16 Cox C. C. 418, and note (*b*) to s. 6 of the Act of 1875, *ante*, p. 10.

(*d*) Or cheese (s. 5 of the Act of 1899).

(*e*) **Warranty or Invoice.**—The words "or invoice" are important. They do not occur in the corresponding section (25) of the Act of 1875, and the result is that an invoice under the Margarine Act is a defence, although it may not amount to a warranty at law. See note (*c*) to s. 25 of the Act of 1875, *ante*, p. 80. With the above exception, the notes to that section are applicable to this.

(*f*) **Further Provisions.**—The concluding sentence of this section from the words "but shall be liable" to the end, though not in terms repealed, is no longer effective, since s. 20 of the Act of 1899 (*post*, p. 162) introduces a new and far more stringent set of provisions with regard to the defence of warranty.

8. *Margarine Imported or Manufactured.*—All margarine (*a*) imported (*b*) into the United Kingdom of Great Britain and Ireland, and all margarine (*a*)

whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine (*a*); and it shall be lawful for any officer of her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances (*c*), or police constable, authorised under section thirteen of the Sale of Food and Drugs Act, 1875, to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples (*d*) from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed.

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **Imported Margarine.**—Imported margarine or margarine-cheese must, by s. 1 of the Act of 1899, be contained in packages conspicuously marked "Margarine" or "Margarine-cheese."

(*c*) **Inspector of Weights, etc.**—Except as regards London, inspectors of weights and measures have been added to this list by s. 12 of the Act of 1907, *post*, p. 187.

(*d*) **Samples.**—See also powers given to the Commissioners of Customs, the Local Government Board, and the Board of Agriculture to take samples in certain cases (ss. 1—4 of the Act of 1899 and s. 2 of the Act of 1907). Note also that by s. 10 of the Act of 1899 a portion of the sample must be sent to the consignor.

9. *Registration of Manufactory* (*a*).—Every manufactory of margarine (*b*) within the United Kingdom of Great Britain and Ireland shall be registered (*c*) by the owner or occupier thereof with the local

authority from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct (*d*), and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence (*e*) under this Act.

(*a*) **Further Regulations.**—For further regulations affecting manufacturers of and dealers in margarine and margarine-cheese, see s. 7 of the Act of 1899, *post*, p. 148.

(*b*) **Extension of Section.**—This section is extended by s. 7 (4) of the Act of 1899 to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on, and by s. 1 (1) of the Act of 1907 to butter and milk-blended butter factories and to the premises of wholesale dealers in milk-blended butter.

(*c*) **Notification of Registration.**—The registration must be forthwith notified to the Board of Agriculture by the local authority (s. 7 (5) of the Act of 1899).

(*d*) **Order of Local Government Board.**—For the manner of registration and the necessary forms, see Orders of the Local Government Board dated December 22nd, 1887, February 26th, 1900, and December 28th, 1907, in the Appendix, *post*, pp. 203, 206, 209.

(*e*) **New Offences.**—Section 7 (3) of the Act of 1899, *post*, p. 148, creates five new offences.

10. *Power to Inspectors to take Samples without Purchase.*—Any officer (*a*) authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter (*b*), or

substances purporting to be butter (*b*), which are exposed for sale, and are not marked Margarine (*c*), as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter (*b*).

(*a*) **Officers authorised to take Samples.**—The powers given to "officers" under this section are extended by ss. 1, 2, and 3 of the Act of 1899 to officers of the Commissioners of Customs, the Local Government Board, and the Board of Agriculture.

(*b*) Or cheese (s. 5 of the Act of 1899).

(*c*) Or margarine-cheese (s. 5 of the Act of 1899).

11. *Appropriation of Penalties.*—Any part of any penalty recovered under this Act may, if the court shall so direct (*a*), be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled.

(*a*) **Payment of Penalty.**—In the absence of any direction by the court, the penalty is to be paid to the officer of the local authority prosecuting, and not to the police. See *R.* v. *Titterton*, [1895] 2 Q. B. 61; 59 J. P. 327; 64 L. J. M. C. 202; 73 L. T. 345; 43 W. R. 603; 18 Cox C. C. 181.

12. *Proceedings.*—All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of Food and Drugs Act, 1875, and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

13. *Definition of Local Authority.*—The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875 (*a*).

(*a*) See ss. 10 and 11 of the Act of 1875, *ante*, pp. 45 and 48.

THE SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 Vict. c. 51.)

An Act to Amend the Law relating to the Sale of Food and Drugs. [9th August, 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Precautions against Importation of Agricultural and other Produce Insufficiently Marked.*—(1) If there is imported into the United Kingdom any of the following articles, namely :

(a) margarine or margarine-cheese, except in packages conspicuously marked (*a*) " Margarine " or " Margarine-cheese," as the case may require ; or

(b) [*adulterated or impoverished butter (other than margarine) or*] (*b*) adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the [*butter or*] (*b*) milk or cream has been so treated ; or

(c) condensed separated or skimmed milk, except in tins or other receptacles which bear a label (*c*) whereon the words " Machine-skimmed Milk " or " Skimmed Milk," as the

case may require, are printed in large and legible type ; or

(d) any adulterated or impoverished article of food to which her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked (*a*) with a name or description indicating that the article has been so treated.

[N.B.—*The following five articles have been added to this list by s.* 5 *of the Act of* 1907, *viz. :*

(e) Butter containing more than sixteen per cent. of water :

(f) Margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter fat ;

(g) Milk-blended butter containing more than twenty-four per cent. of water ;

(h) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture and Fisheries for the purpose (*d*) ;

(j) Butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation (*e*)] ;

the importer shall be liable (*f*), on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*g*).

(2) The word "importer" shall include any person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in anywise entitled to the custody or control of, the article; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876 (*h*).

(3) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions of this section.

(4) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories (*i*), and retain one part.

(5) In any proceeding under this section the certificate of the principal chemist (*k*) of the result of the analysis shall be sufficient evidence (*l*) of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness (*m*).

(6) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the Board of Agriculture for their information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such a quantity as not to render the article injurious to health (*n*).

This section has been considerably extended by s. 5 of the Act of 1907, *post*, p. 179.

Enforcement of Provisions.—The important point to be noted in connection with this section is that its provisions are enforceable not by the local authority, or private individuals, as in the case of prosecutions under the previous Acts, but by the Commissioners of Customs, and by them alone. This distinguishes it from provisions in the Margarine Act which are similar in other respects. Thus, under s. 6 of that Act, an importer of margarine is liable to a prosecution by the local authority if the packages containing the margarine are not marked in a particular way, while under s. 8 of the same Act the Commissioners of Customs have power to take samples where they have reason to suspect that the Margarine Act has been infringed (*cf.* also s. 30 of the Act of 1875). Now the Commissioners of Customs have not only power to take samples, but they may also prosecute if an offence against this section has been committed; and further, their power to take samples is considerably widened (sub-s. (3)), and they may prosecute in respect of any of the articles mentioned in the section.

Definitions.—For definition of "Butter," see s. 3 of the Margarine Act, *ante*, p. 122. "Margarine" is defined in s. 13 of the Act of 1907, *post*, p. 187; "Margarine-cheese" in s. 25 of this Act, *post*, p. 170; "Food" in s. 26, *post*, p. 171; "Importer" in sub-s. (2) of this section, *supra*, and "adulterated or impoverished" in sub-s. (7), *supra*.

(*a*) **"Conspicuously Marked."**—The mark must be on the package itself (see s. 6 (1) of this Act, *post*, p. 147). Note, however, that this provision applies only to packages containing margarine or margarine-cheese, and that therefore packages containing any of the other articles to which this section applies need only be "conspicuously marked."

(*b*) **Repeal.**—The words in square brackets are repealed by s. 5 (1) of the Act of 1907.

(*c*) **Label.**—In this one instance a label is sufficient and the receptacle itself need not be marked.

(*d*) **Names for Milk-blended Butter.**—See s. 9 of the Act of 1907, *post*, p. 183.

(*e*) **Regulations as to Preservatives.**—See s. 7 of the Act of 1907, *post*, p. 182.

(*f*) **Defence of Warranty.**—A warranty is no defence to a prosecution under this section, though it is relevant on the question of penalty (*Kelly* v. *Lonsdale & Co.*, [1906] 2 K. B. 486; 70 J. P. 441; 75 L. J. K. B. 822; 95 L. T. 427; 4 L. G. R. 949).

(*g*) **Penalty.**—By s. 17 (2), *post*, p. 155, the offender may also be imprisoned.

And, by s. 5 (2) of the Act of 1907, *post*, p. 180, the Commissioners may elect to demand a fine equal to the value of the goods.

(*h*) **Appeals.**—The Customs Consolidation Act, 1876, gives no right of appeal to quarter sessions, and therefore, notwithstanding the last paragraph of s. 25, *post*, p. 171, there is no appeal from convictions under this section (*Rex* v. *Otto Monsted, Limited*, [1906] 2 K. B. 456; 70 J. P. 435; 75 L. J. K. B. 629; 95 L. T. 526; 4 L. G. R. 942).

(*i*) **Analysis of Sample.**—Note that this is to be made by the Government, and not by the county or borough analysts.

(*k*) **Certificate of Principal Chemist.**—This need not be in the form prescribed by the Act of 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129).

The certificate is *primâ facie* evidence (see s. 5 (3) of the

Act of 1907, *post*, p. 180, which also makes provision for calling the principal chemist to give oral evidence).

The certificate must be forthwith notified to the importer (s. 5 (4) of the Act of 1907).

(*l*) **"Sufficient Evidence."**—*Cf.* s. 21 of the Act of 1875, *ante*, p. 72, and the cases cited thereunder.

By s. 5 (3) of the Act of 1907, *post*, p. 180, the certificate raises a presumption till the contrary is proved.

Evidence for Defence.—The certificate of any public analyst may be used by the defendant in his defence. See s. 22, *post*, p. 169.

(*m*) **Calling Analyst as Witness.**—By s. 5 (3) of the Act of 1907, *post*, p. 180, the defendant must give three clear days' notice, and deposit a sum for the analyst's expenses.

(*n*) **"Injurious to Health."**—*Cf.* note (*a*) to s. 3 of the Act of 1875, *ante*, p. 6.

2. *Power for Local Government Board or Board of Agriculture to Sample Articles of Food.*—(1) The Local Government Board may, in relation to any matter appearing to that Board to affect the general interest of the consumer, and the Board of Agriculture may, in relation to any matter appearing to that Board to affect the general interests of agriculture in the United Kingdom, direct an officer of the Board to procure for analysis samples of any article of food, and thereupon the officer shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts (*a*), and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

(a) the officer procuring the sample shall (*b*) divide the same into four parts, and shall deal with three of such parts in the manner

directed by section fourteen of the Sale of Food and Drugs Act, 1875 (*c*), as amended by this Act (*d*), and shall send the fourth part to the Board; and

(b) the fee for analysis (*e*) shall be payable to the analyst by the local authority of the place where the sample is procured.

(2) The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and power (*f*) on the part of the local authority to cause proceedings (*g*) to be taken as if the local authority had caused the analysis to be made.

Effect of Section.—The practical effect of this and the succeeding section is to give the Local Government Board and the Board of Agriculture a roving commission to see that the Acts are properly enforced throughout the kingdom. Prior to the passing of this Act, as the report of the Select Committee showed, the Acts were properly enforced in some districts and disregarded in others. The object of the legislature has evidently been to remove these differences as far as possible. See also notes (*a*) and (*b*) to s. 3, *infra*.

Special powers of taking samples of milk are conferred upon the Local Government Board by Regulation VII. of the Milk and Cream Regulations, 1912, *post*, p. 225.

(*a*) **Power to Procure Samples.**—See s. 13 of the Act of 1875, s. 3 of the Act of 1879, and s. 10 of the Margarine Act, *ante*, pp. 49, 111, 132, and s. 14 of this Act, *post*, p. 153.

(*b*) **Special Procedure, whether Compulsory.**—It has been held in Scotland that the officer of the Board need not follow this special procedure unless he desires to impose the cost of proceedings upon the local authority. In *Falconer* v. *Whyte*, [1908] Sess. Cas. (J.) 40, the Irish Department of Agriculture (see s. 24, *infra*) sent their officer to Glasgow to obtain samples of Irish produce, and take proceedings where necessary. In taking samples he followed the procedure of s. 14 of the Act of 1875, and not that of this section. The

Court of Justiciary held that he was entitled to do so; that the object of this and the next section is to enable Government Departments to take proceedings at the expense of the local authority; that these sections do not take away their right, if they choose to do so at their own expense, of instructing their officers to take proceedings under the Act of 1875 as private individuals.

(*c*) *Ante*, p. 53.

(*d*) See s. 13, *post*, p. 153.

(*e*) **Fee for Analysis.**—See ss. 12 and 13 of the Act of 1875, *ante*, pp. 48, 49.

(*f*) **Power of Local Authority.**—See s. 20 of the Act of 1875, *ante*, p. 69. The only "duty" cast upon a local authority to take proceedings is that created by s. 3 (1), *infra*.

(*g*) **Proceedings by Local Authority.**—In *Connor* v. *Butler*, [1902] 2 I. R. 569, the defendant was prosecuted by a local inspector, (1) under s. 17 of the Act of 1875, for refusing to sell to an officer of the Irish Agricultural Department; (2) under s. 6 of the Margarine Act, for exposing for sale unmarked margarine; and (3) under the same section, for selling margarine without a wrapper to the officer of the Agricultural Department. The facts were that an officer of the Irish Agricultural Department took a sample on November 12th, and caused it to be analysed. On December 4th the result of the analysis was communicated to the secretary of the local authority, who handed the certificate to the local inspector. The latter took out a summons on December 6th without any special authorisation from the local authority, whose next meeting was not until December 9th. At that meeting the inspector's action was approved. The magistrates dismissed the summons on the grounds that the local inspector was not entitled to prosecute, because he had not "caused the analysis to be made" (s. 20 of the Act of 1875, *ante*, p. 69), and because he was acting without authority. But the King's Bench Division in Ireland held that the magistrates were wrong. Upon the summons for refusing to sell they held that any person, even a common informer, is entitled to take proceedings for that offence. Upon the other two summonses, they held that the local inspector was entitled to take proceedings, notwithstanding

the fact that he was not the person who had actually caused the analysis to be made, by reason of sub-s. (2) of this section; and, further, that the fact that he had had no special authorisation to act was immaterial, and Lord O'BRIEN, C.J., said: "I think that the function of the local authority is adequately discharged if their secretary when he receives the certificate hands that document to the officer charged with the execution of the Act to proceed thereon in his own name." MADDEN and KENNY, JJ., expressed the opinion that the subsequent ratification by the local authority of their inspector's action was wholly unnecessary.

3. *Power for Local Government Board or Board of Agriculture to act in default of Local Authority.*—(1) It shall be the duty (*a*) of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

(2) If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interest of agriculture in the United Kingdom, as the case may be, the Board concerned may (*b*), by order, empower an officer of the Board to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the Board on demand, and in default the Board may recover the amount of the expenses with costs from the local authority.

(4) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency (*c*) as may from time to time be required by regulation framed by the Local Government Board (*d*).

(*a*) **Duty of Local Authority.**—This is the first time in the Sale of Food and Drugs Acts that a positive duty is cast upon local authorities to see to the proper execution of the Acts, and a remedy provided in case they make default. Prior to the passing of this Act there were no means of compelling a negligent local authority to do its duty.

(*b*) **Additional Powers.**—In addition to the powers given to them by this section, the Local Government Board and the Board of Agriculture clearly have power to compel a local authority by *mandamus* to appoint an analyst. See *R.* v. *Leicester Guardians*, [1899] 2 Q. B. 632; 68 L. J. Q. B. 945; 81 L. T. 559. It seems doubtful, on the other hand, whether a *mandamus* would be granted to compel a local authority to perform any of the other duties cast upon it by this section, since an adequate remedy seems to be provided by sub-s. (2). See *Passmore* v. *Oswaldtwistle Urban Council*, [1898] A. C. 387; 62 J. P. 628; 65 L. J. Q. B. 635; 78 L. T. 569.

As to *mandamus* to compel a local authority to perform its duties under the Milk and Dairies Act, 1922, see s. 11 of that Act, p. 197, *post*.

And the Board may, at their own expense, direct their officers to take proceedings under the Act of 1875 as private individuals. See note (*b*) to s. 2, *ante*.

(*c*) **Proof of Competency.**—This is an addition to the provisions of s. 10 of the Act of 1875, *ante*, p. 45.

(*d*) **Regulation of Local Government Board.**—By Regulation dated March 7th, 1900, a public analyst is required to have competent knowledge of (a) Analytical chemistry; (b) Therapeutics, and (c) Microscopy. See Appendix, *post*, p. 213. See also Circular Letter dated March 8th, 1900, from the Local Government Board to Clerks to Local Authorities. Appendix, *post*, p. 262.

4. *Power for Board of Agriculture to make Regulations as to Analysis of Milk, Cream, Butter or Cheese.*—(1) The Board of Agriculture may, after such inquiry as they ~~may~~ deem necessary, make regulations (*a*) for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption (*b*), until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis (*c*) under those Acts.

(2) Any regulations made under this section shall be notified in the London and Edinburgh Gazettes, and shall also be made known in such other manner as the Board of Agriculture may direct.

(*a*) **Regulations of Board of Agriculture.**—By the Sale of Milk Regulations, 1901 and 1912 (Appendix, *post*, p. 214),

made under this section, milk containing less than 3 per cent. of milk fat or less than 8·5 per cent. of non-fatty solids, and skimmed or separated milk (other than condensed milk), containing less than 8·7 per cent. of milk solids other than fat are to be presumed not to be genuine. These regulations have practically adopted a very elaborate report dated August 15th, 1893, made by Dr. Bell, C.B., F.R.S., the principal of the Government Laboratory. See also Circular Letter, dated December 28th, 1901, from the Board of Agriculture to clerks to local authorities, Appendix, *post*, p. 264.

By the Sale of Butter Regulations, 1902, Appendix, *post*, p. 217, butter containing more than 16 per cent. of water is to be presumed not to be genuine.

(*b*) **Presumption.**—Note that the fact that a sample of milk, etc., falls short of the standard is not conclusive evidence of adulteration. The presumption may be rebutted by the evidence of the defendant himself, if believed; independent testimony is not essential (*Lamont* v. *Rodger*, [1911] Sess. Cas. (J.) 24). And see the cases collected under the heading "Milk" in note (*e*) to s. 6 of the Act of 1875, *ante*, p. 24.

(*c*) **Form of Certificate.**—For form of certificate and decisions thereon, see s. 18 of the Act of 1875, and Schedule, *ante*, pp. 68, 103.

5. *Extension of Margarine Act, 1887, to Margarine-cheese.*—The provisions of the Margarine Act, 1887, as amended by this Act (*a*), shall extend to margarine-cheese, and shall apply accordingly, with the substitution of "margarine-cheese" and "cheese" (*b*) for "margarine" and "butter," and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be inclosed in packages marked (*c*) in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese."

(*a*) See ss. 6—8, 10, 20 (4), *post*.
(*b*) For definitions, see s. 25, *post*, p. 170.
(*c*) See s. 6 of the Margarine Act, *ante*, p. 125, and s. 6 of this Act, *infra*.

6. *Marking of Margarine and Margarine-cheese.*—(1) Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked (*a*), the brand or mark shall be on the package (*b*) itself and not solely on a label, ticket, or other thing attached thereto.

(2) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less than half an inch long (*c*) and distinctly legible, and no other printed matter (*d*) shall appear on the wrapper.

(3) [*The words "or with" (e) in section six of the Margarine Act, 1887, shall be repealed.*]

This section is not repealed by s. 8 of the Act of 1907, *post*, p. 183 (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89; 80 L. J. K. B. 545; 104 L. T. 178; 9 L. G. R. 178; and *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111; 10 L. G. R. 127).

(*a*) **Branded or Marked.**—See s. 6 of the Margarine Act, and ss. 1 (1) and 5 of this Act, *ante*, pp. 125, 135, 146.

(*b*) **Package,**—*i.e.*, the package referred to in the first part of s. 6 of the Margarine Act. The latter part of that section dealing with the "paper wrapper" to be used in retail sales is not affected by this sub-section; but see sub-s. (2), *infra*.

(*c*) **Size of Letters.**—Formerly, by the repealed words of s. 6 of the Margarine Act, the letters were only required to be a quarter of an inch square.

(*d*) **Other Printed Matter.**—This enactment is due to the decisions in *Fyfe* v. *McLaughlin* (1893), 30 Sc. L. R. 899, and *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, *ante*,

p. 128, in which it was held that the word "margarine" might appear in the midst of other printed matter. The latter case also deals with other points which are not affected by this sub-section. See note (*h*) to s. 6 of the Margarine Act, *ante*, p. 128, and note (*a*) to s. 7 of the same Act, *ante*, p. 130.

It is an offence under this section to gum on to the wrapper slips or labels containing other printed matter (even the price); or to print other matter on an opaque inner wrapper covered by a transparent outer wrapper printed with the word "Margarine" only (*Millard* v. *Allwood*, *supra*). See, further, s. 8 of the Act of 1907, *post*, p. 183.

(*e*) **"Or with."**—*Ante*, p. 126.

7. *Provisions as to Manufacturers of and Dealers in Margarine and Margarine-cheese.*—(1) Every occupier of a manufactory of margarine or margarine-cheese (*a*), and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture.

[(2) *Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any process of manufacture therein, and to take samples for analysis*] (*b*).

(3) If any such occupier or dealer—

(a) fails to keep such a register, or

(b) refuses to produce the register (*c*) when required to do so by an officer of the Board of Agriculture, or

(c) fails to keep the register posted up to date, or

(d) wilfully makes any entry in the register which is false in any particular, or

(e) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds (*d*).

(4) The provisions of section nine of the Margarine Act, 1887 (*e*), relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

(5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Board of Agriculture.

(*a*) **Extension of Section.**—By s. 1 of the Act of 1907 this section is extended to consignments of milk-blended butter.

(*b*) **Repeal.**—Sub-section (2) is repealed by s. 2 of the Act of 1907, which substitutes amended provisions.

(*c*) **Taking Notes from Register.**—The Court of Session in Scotland have held that the power to inspect the register carries with it the power to take notes therefrom, and that a margarine manufacturer who refuses to allow an officer of the Board of Agriculture to take notes from his register may be convicted of refusing to produce the register (*Hart* v. *Cohen and Van der Laan* (1902), 4 Fraser, 445; 39 Sc. L. R. 322).

(*d*) **Penalty.**—The court may also imprison for a second or subsequent offence. See s. 17 (2), *post*, p. 155.

(*e*) *Ante*, p. 131.

8. *Restriction on Amount of Butter Fat in Margarine.*—It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter

fat (*a*), and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887 (*b*), and any defence which would be a defence under section seven of that Act (*c*) shall be a defence under this section, and the provisions of the former section shall apply accordingly.

[*Provided that nothing in this section shall apply to any margarine manufactured or imported in fulfilment of any contract made before the twentieth day of July one thousand eight hundred and ninety-nine*] (*d*).

(*a*) **Milk-blended Butter.**—A mixture of butter and fresh milk is not " margarine " within the definition in s. 3 of the Margarine Act, and therefore may be sold, in spite of the provisions of this section, although it contains more than 10 per cent. of butter fat (*Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 66 J. P. 790 ; 87 L. T. 67). But by the Act of 1907 restrictions are now placed upon the sale of such substances.

This provision may have the effect of legalising very undesirable practices. See *Anness* v. *Grivell*, *ante*, p. 22.

(*b*) See s. 4 of the Margarine Act, *ante*, p. 124, which also creates the penalty.

(*c*) **Defence of Warranty.**—The only defence mentioned in s. 7 of the Margarine Act, *ante*, p. 129, is a defence that the article sold was purchased by the seller *as butter*, with a warranty or invoice to that effect. Therefore, it is apparently no defence to a prosecution under this section to allege that the article sold was purchased *as pure margarine*, with a warranty or invoice to that effect, although it might have been expected that such a defence would have been allowed to prevail.

As to whether the warranty defence in s. 25 of the Act of 1875 applies to this Act, see note (*b*) to that section, *ante*, p. 79.

(*d*) **Repeal.**—The words in square brackets are repealed by the Statute Law Revision Act, 1908.

9. *Provision as to Name and Address of Person selling Milk or Cream in a Public Place.*—Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle (*a*) his name (*b*) and address, and in default shall be liable on summary conviction to a fine (*c*) not exceeding two pounds.

(*a*) **Vehicle or Receptacle.**—In *Crabtree* v. *Skelton* (1901), 70 L. J. K. B. 560, a milk seller who was selling milk from house to house, occasionally left his cart and walked from house to house with a can. His name and address were on the cart, but not on the can. He was prosecuted for an offence under this section. Lord ALVERSTONE, C.J., and LAWRANCE, J., held that if the sale was from the cart the name and address must be on the cart, but if from the can, then the name and address must be on the can.

(*b*) **Name.**—Presumably the name under which he carries on business at the particular address.

(*c*) **Fine.**—This cannot be increased upon a second conviction. See s. 17, *post*, p. 155.

10. *Division of Samples taken in Course of Delivery or Transit.*—In the case of a sample taken of milk in course of delivery (*a*), or of margarine or margarine-cheese forwarded by a public conveyance (*b*), the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled.

(*a*) **Milk in Course of Delivery.**—See s. 3 of the Act of 1879, *ante*, p. 111, and the notes thereon.

(*b*) **Margarine Forwarded by Public Conveyance.**—See s. 8 of the Margarine Act, *ante*, p. 130, and the notes thereon.

11. *Provisions as to Condensed Separated or Skimmed Milk.*—Every tin or other receptacle containing condensed separated or skimmed milk (*a*) must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells (*b*) or exposes or offers for sale condensed separated or skimmed milk (*a*) in contravention of this section he shall be liable (*c*) on summary conviction to a fine (*d*) not exceeding ten pounds.

(*a*) **"Condensed Separated or Skimmed."**—This means "condensed separated milk or condensed skimmed milk," and the section does not apply to ordinary separated or skimmed milk (*French* v. *Card* (1909), 73 J. P. 389; 101 L. T. 428).

(*b*) **Importer.**—The importer of condensed separated or skimmed milk in receptacles not labelled as above is also liable to a penalty. See s. 1 of this Act, *ante*, p. 135.

(*c*) **Defence of Warranty.**—It is not quite clear whether a warranty is a defence to a prosecution under this section. See note (*b*) to s. 25 of the Act of 1875, *ante*, p. 79.

(*d*) **Fine.**—This cannot be increased upon a second conviction. See s. 17, *post*, p. 155.

12. *Notice of Mixtures.*—The label referred to in section eight of the Sale of Food and Drugs Act, 1875 (*a*), shall not be deemed to be distinctly and legibly written or printed within the meaning of that

section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter (*b*) on the label: Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act; but the Comptroller-General of Patents, Designs, and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.

(*a*) *Ante*, p. 35.

(*b*) **Other Matter.**—The section does not prohibit other matter entirely as in the case of the margarine label under s. 6 (2), *ante*.

13. *Amendment of* 38 *&* 39 *Vict. c.* 63, *as to Samples.*—[*In section fourteen of the Sale of Food and Drugs Act*, 1875, *the words "offer to"* (*a*) *and the words "proceed accordingly and shall"* (*a*) *shall be repealed.*]

This section is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49), but the words here repealed are, of course, not revived.

(*a*) *Ante*, p. 53.

14. *Taking Samples in Course of Delivery.*—The provisions of section three and section four of the Sale of Food and Drugs Act Amendment Act, 1879 (*a*) (relating to the taking of samples of milk in course of delivery), shall apply to every other article of food (*b*): Provided that no samples shall be taken under this section except upon

the request or with the consent of the purchaser or consignee (*c*).

(*a*) *Ante*, pp. 111, 118.

(*b*) **Food.**—For definition, see s. 26, *post*, p. 171.

(*c*) **Milk.**—This proviso does not apply to samples of milk. They are dealt with by s. 3 of the Act of 1879, which contains no such proviso.

15. *Amendment of* 38 *&* 39 *Vict. c.* 63, *as to Registered Parcels.*—In section sixteen of the Sale of Food and Drugs Act, 1875, the words "registered parcel" shall be substituted for the words "registered letter" (*a*).

(*a*) *Ante*, p. 61.

16. *Obstruction of Officer in Discharge of his Duties.*—Any person who wilfully (*a*) obstructs (*b*) or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*c*).

These provisions are supplementary to those of s. 17 of the Act of 1875, *ante*, p. 64, and s. 4 of the Act of 1879, *ante*, p. 118.

(*a*) **Guilty Knowledge.**—Intentional misconduct is essential to this offence. See *Taylor* v. *Nixon*, [1910] 2 I. R. 94,

where a married woman was licensee of a public-house, which was managed by her husband. An inspector asked for whisky out of a particular bottle, and the husband deliberately smashed it, so that no sample could be taken. The justices convicted the wife of obstructing, but the King's Bench Division in Ireland quashed the conviction, as there was no evidence that the act was done with her authority or connivance.

(*b*) **"Obstructs or Impedes."**—To refuse to allow an inspector to take a sample of milk from the tap of the can, but to offer him one taken from the top of the milk, is not to obstruct him under this section (*Soutar* v. *Kerr*, [1907] Sess. Cas. (J.) 49 ; 5 Adam, 260).

It is submitted that where an inspector is being helped by an assistant, it would be an offence under this section knowingly to obstruct the assistant, since this would amount to obstructing the inspector himself.

(*c*) **Penalty.**—He may also, under certain circumstances, be imprisoned. See s. 17, *infra*.

17. *Penalties for Offences under the Sale of Food and Drugs Acts.*—(1) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to twenty pounds as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine exceeding fifty pounds, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused (*a*), that person shall be liable (if the court is of opinion that a fine will not meet

the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

Application of Section.—For the provisions to which this section applies, see ss. 6, 7, 9 and 27 of the Act of 1875, s. 4 of the Margarine Act, and ss. 1, 8, 16 and 20 of this Act.

(*a*) **Person Accused.**—This sub-section apparently does not apply to a limited company. See *Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1; 66 J. P. 774; 71 L. J. K. B. 656; 87 L. T. 51.

18. *Articles Sold in Tins or Packets.*—Notwithstanding anything in section seventeen of the Sale of Food and Drugs Act, 1875, where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained.

This provision was inserted in consequence of a recommendation of the Select Committee of 1894—6, who called attention to the unfairness of asking for a portion of the contents of a properly labelled tin or package, and then instituting proceedings because no declaration of admixture was made.

19. *Time for Proceeding and Regulation as to Summons.*—(1) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in section twenty of the Sale of Food and Drugs Act, 1875, shall not be instituted (*a*) after the expiration of twenty-eight days (*b*) from the time of the purchase.

(2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars (*c*) of the offence or offences alleged, and also the name of the prosecutor (*d*), and shall not be made returnable in less time than fourteen days (*e*) from the day on which it is served, and there must be served therewith a copy of any analyst's certificate (*f*) obtained on behalf of the prosecutor.

Time Limit.—This section supersedes s. 10 of the Act of 1879. The time limit of twenty-eight days applies to proceedings against persons charged as accessories (aiding and abetting) as well as to those charged as principals (*Gould* v. *Houghton*, [1921] 1 K. B. 509; 85 J. P. 93; 90 L. J. K. B. 369; 124 L. T. 566; 37 T. L. R. 291; 65 Sol. J. 344; 26 Cox C. C. 693; 19 L. G. R. 85). The cases decided under the repealed section are applicable *mutatis mutandis* to this.

(*a*) **Institution of Prosecution.**—The prosecution is "instituted" on the day when the information is laid, and not on the day when the summons is served (*Beardsley* v. *Giddings*, [1904] 1 K. B. 847; 68 J. P. 222; 73 L. J. K. B. 378; 90 L. T. 651; 53 W. R. 78; 20 Cox C. C. 645; 2 L. G. R. 719). The contrary decision at petty sessions, reported in *Cowling* v. *Taylor's Drug Co., Limited* (1901), 66 J. P. 11, is therefore overruled.

In *Brooks* v. *Bagshaw*, [1904] 2 K. B. 798; 68 J. P. 514; 73 L. J. K. B. 839; 91 L. T. 535; 53 W. R. 13; 20 Cox C. C. 727; 2 L. G. R. 1007, an information was laid and a summons issued within twenty-eight days from the purchase, but the summons was not served and was allowed to drop, and a second summons was issued on the same information and was served after the twenty-eight days. The High Court held that as the first summons had not been adjudicated upon on the merits, the proceedings had been instituted in time.

(*b*) **Twenty-eight Days.**—The provision as to time is imperative, and is not waived by the appearance of the defendant under protest. See *Dixon* v. *Wells* (1890), 25

Q. B. D. 249 ; 54 J. P. 725 ; 59 L. J. M. C. 116 ; 62 L. T. 812 ; 38 W. R. 606 ; 17 Cox C. C. 48.

In the case of *Frew* v. *Morris* (1897), 24 Rettie (J.C.), 50 ; 34 Sc. L. R. 527, decided under the repealed section, the Court of Justiciary in Scotland held that in computing the period of twenty-eight days, the day on which the purchase took place is not to be taken into account ; and that, therefore, when the sample was bought at 9 a.m. on November 4th, a summons served at 7.30 p.m. on December 2nd was in time. And in *Horan* v. *Power* (1916), 50 Ir. L. T. 64, an article of food was bought for analysis between 12.15 and 12.30 p.m. on September 13th, and was found to be adulterated. At 4 p.m. on October 11th a summons was served ; but the report does not state when the information was laid. It was held by the King's Bench Division in Ireland that the summons was in time. It is not clear whether these decisions would be followed in England. At first sight they seem to strain in favour of the prosecution the language of a section obviously framed in favour of the defendant. See the reasoning of CHITTY, J., in *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204. But in *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161 ; 56 J. P. 262 ; 61 L. J. M. C. 63 ; 65 L. T. 677 ; 40 W. R. 63, a case under the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), which provides that every complaint under the Act is to be made " within one calendar month after the cause of such complaint shall arise," WILLS and LAWRANCE, JJ., held that the day on which the offence was committed was to be excluded, and that an information laid on June 30th for an offence committed on May 30th was in time. It should be observed that in neither of the two last cases were the words the same as those of this section, and also that the words of this section differ somewhat from those of the repealed section under which *Frew* v. *Morris* was decided. See also *McQueen* v. *Jackson* in note (*e*), *post*. But *Horan* v. *Power* was decided under this section.

This time limit does not apply to prosecutions for giving a false warranty (*Cook* v. *White*, [1896] 1 Q. B. 284 ; 60 J. P. 330 ; 65 L. J. M. C. 46 ; 74 L. T. 53 ; 44 W. R. 409 ; 18 Cox C. C. 229). Such prosecutions are subject to the limitation of six months imposed by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Whitaker* v. *Pomfret Bros.*, [1902]

1 K. B. 661 ; 66 J. P. 408 ; 71 L. J. K. B. 353 ; 86 L. T. 420 ; 50 W. R. 398). In that case, on November 20th, 1900, a wholesale dealer sold pepper to a retailer with a false warranty. On May 16th, 1901, the retailer sold some of the pepper to an inspector, and was prosecuted under s. 6 of the Act of 1875. He pleaded the warranty and was discharged. On July 6th, 1901, the wholesale dealer was prosecuted for giving a false warranty. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the prosecution was out of time, since more than six months had elapsed since the warranty was given.

The time limit does not apply to samples taken under s. 2 of the Act of 1907, *post*, p. 175 (*Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578 ; 76 J. P. 131 ; 81 L. J. K. B. 547 ; 106 L. T. 114 ; 10 L. G. R. 134).

(*c*) **Particulars.**—The question what are sufficient particulars is one for the justices to decide, and where a defendant objects to the particulars of the offence as being insufficient, the right course for him to adopt would appear to be to ask for an adjournment in order that he may be better able to meet the charge. But since it is apparently in the absolute discretion of the justices to decide whether the particulars are sufficient, and whether they will grant the adjournment, it would appear improbable from the following cases that their ruling would be interfered with on an appeal to the High Court.

In *R.* v. *Wakefield* (1890), 54 J. P. 148, the defendant had been convicted of selling milk not of the nature, substance, and quality demanded. On analysis, the milk was found to be mixed with water, but the summons did not give any particulars as to how the milk was adulterated, merely stating that the article demanded was new milk. The defendant did not ask for an adjournment, but contended that the statement of particulars of adulteration was a condition precedent to the prosecution, and that the justices had no jurisdiction to try the case. The rule, however, was discharged, and it was held that it was for the justices to decide whether the particulars were sufficient.

In *Barnes* v. *Rider* (1892), 57 J. P. 473 ; 62 L. J. M. C. 25 ; 68 L. T. 447 ; 17 Cox C. C. 623, which was also a prosecution for the adulteration of milk, the summons merely stated that the milk sold was not of the nature, substance, and quality

demanded. The defendant objected that no particulars of the offence had been given, but the stipendiary magistrate overruled the objection and convicted him. The High Court (POLLOCK, B., and HAWKINS, J.) decided that the summons was defective, and sent the case back to the magistrate with the expression of their opinion that he should have dismissed the summons.

In *Neal* v. *Devenish*, [1894] 1 Q. B. 544; 58 J. P. 246; 63 L. J. M. C. 78; 70 L. T. 628, which also dealt with the adulteration of milk, the decision in *R.* v. *Wakefield* was followed and approved, while *Barnes* v. *Rider* was expressly disapproved. The particulars of the offence were that the defendant had sold milk "adulterated contrary to s. 6 of the Sale of Food and Drugs Act, 1875." The defendant objected, as in the preceding case, that these particulars were insufficient, but the justices overruled the objection, and convicted him. The High Court (MATHEW and CAVE, JJ.) decided that the particulars were sufficient and further that, even if they were not, it was for the justices to decide the point, and that the proper course for the defendant was to ask for an adjournment. MATHEW, J., said: "We were referred to the case of *Barnes* v. *Rider* as supporting the appellant's contention; but that case seems to me to be entirely opposed to the earlier case of *R.* v. *Wakefield*."

In future it will probably be unnecessary to raise any such objections as are contained in the above cases, since the defendant will obtain all the information he is likely to want from the analyst's certificate, which must now be served with the summons. And it is suggested that it is better not to state in the summons the exact percentage of adulteration alleged, since if the third part of the sample goes to the Government chemist, and he certifies a somewhat different percentage, it is sometimes argued that the defendant has not committed the offence with which he is charged.

(*d*) **Name of the Prosecutor.**—In *Burns* v. *Williamson* (1897), 24 Rettie (J.C.), 58; 2 Adam, 308; 34 Sc. L. R. 670, a summons citing a person to answer a complaint "at the instance of the burgh prosecutor" without giving his name, was held to be bad under s. 10 of the Act of 1879.

(*e*) **Fourteen Days.**—This means fourteen clear days. See *McQueen* v. *Jackson*, [1903] 2 K. B. 163; 72 L. J. K. B. 606;

88 L. T. 871, where the King's Bench Division held that a summons served on November 26th, and made returnable on December 10th, was bad.

The provision applies *mutatis mutandis* to Scotland, where a defender must not be cited on less than fourteen days *induciae*. See *Dunlop* v. *Goudie* (1895), 22 Rettie (J.C.), 34; 1 Adam, 554.

(*f*) **Service of Certificate.**—Service of a copy of the certificate is not a condition precedent to the jurisdiction of the justices; omission to do so is only an informality capable of being waived by the defence, though fatal if the objection is taken at once (*Grimble & Co.* v. *Preston*, [1914] 1 K. B. 270; 78 J. P. 72; 83 L. J. K. B. 347; 110 L. T. 115; 30 T. L. R. 119; 12 L. G. R. 382, distinguishing *Batt* v. *Mattinson* (1900), 64 J. P. 615; 82 L. T. 800; 19 Cox C. C. 532). *Grimble & Co.* v. *Preston* was followed in *Haynes* v. *Davis*, [1915] 1 K. B. 332; 79 J. P. 187; 84 L. J. K. B. 441; 112 L. T. 417; 13 L. G. R. 497, a prosecution for selling adulterated milk, in which no certificate of analysis was served with the summons. On discovering this, the magistrates dismissed the summons without going into the facts. Another summons was then taken out for the same offence, and a certificate was served with it. It was held by RIDLEY and AVORY, JJ. (*dissentiente* LUSH, J.), that the defendant was in peril on the first summons and could plead *autrefois acquit* to the second. But in *Williams* v. *Letheren*, [1919] 2 K. B. 262; 83 J. P. 159; 88 L. J. K. B. 944; 121 L. T. 145; 35 T. L. R. 378; 63 Sol. J. 535; 26 Cox C. C. 419; 17 L. G. R. 338, a prosecution for giving a false warranty in which no certificate was served with the summons, the magistrates, upon the objection being taken, adjourned the hearing for twenty-one days; and in the meantime the inspector took out a fresh summons for the same offence and served a certificate with it. Both summonses came on for hearing upon the same day; the second one was heard first, and the defendant was convicted upon it. The court held that this procedure was in order, and that the defendant could not plead *autrefois acquit*. In *Grimble* v. *Preston* and *Williams* v. *Letheren* the question whether a copy of the certificate must be served with a false warranty summons was raised, but not decided.

For further provisions as to certificates for the prosecution

see s. 13 of the Milk and Dairies (Amendment) Act, 1922, *post*, p. 199 ; and as to certificates for the defence, s. 22 of this Act, *post*, p. 169.

20. *Provisions as to Use of Warranty or Invoice as Defence, and Proceedings against the Warrantor.*— (1) A warranty or invoice (*a*) shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent (*b*) to the purchaser a copy of such warranty or invoice (*c*) with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person (*d*).

(2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear (*e*) at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(4) Where the defendant is a servant (*f*) of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875 (*g*), and section seven of the Margarine Act, 1887 (*h*), in the

same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

(5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts (*i*) for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place (*k*) where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

(6) Every person (*l*) who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing (*m*), shall be liable on summary conviction (*n*), for the first offence, to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*o*), unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true (*p*).

(*a*) **Warranty or Invoice.**—It should be remembered that an invoice not amounting in law to a warranty is only available as a defence in margarine prosecutions. See notes to s. 25 of the Act of 1875 and to s. 7 of the Margarine Act, *ante*, pp. 79 and 129.

(*b*) **"Sent."**—A copy of the warranty is duly "sent" if it is posted within seven days, even though it does not, and cannot, reach the addressee till after the seven days (*Retail Dairy Co., Limited* v. *Clarke*, [1912] 2 K. B. 388; 76 J. P. 282; 81 L. J. K. B. 845; 106 L. T. 848; 23 Cox C. C. 6; 28 T. L. R. 361; 10 L. G. R. 547).

(*c*) **Copy of Warranty.**—Apparently the actual words of the warranty need not be set out, provided its terms are distinctly stated. Thus, in *Irving* v. *Callow Park Dairy Co., Limited* (1902), 66 J. P. 804; 87 L. T. 70, the defendants had entered into a contract for a periodical supply of milk to them by a farmer with a warranty of its purity. The contract and warranty were contained in a number of letters between the parties, and each can of milk was labelled "Warranted pure." On being prosecuted under s. 6 of the Act of 1875 the defendants gave notice that they relied upon a warranty, and sent a copy of the label on the cans, but did not disclose the correspondence. The King's Bench Division held that they had complied with the terms of this sub-section, and Lord Alverstone, C.J., said: "What was intended by the terms of the section was that the prosecutor should know the terms of the warranty under which the defendant had bought . . . 'A copy of such warranty' . . . refers back to s. 25 of the Act of 1875, and means a copy of that which entitles the defendant to believe that the article was the same in nature, substance, and quality as that demanded by the prosecutor. Therefore, *primâ facie* that means a copy of the terms of the warranty on which the defendant bought, in order that the prosecution may know what the defence is going to be . . . A copy of the correspondence would not be half as useful as a copy of the terms of the warranty."

In *Farthing* v. *Parkinson* (1904), 68 J. P. 353; 90 L. T. 783; 20 Cox C. C. 661; 2 L. G. R. 989, the appellant bought butter under a verbal contract that a written warranty should be given and put upon the invoice. The invoice arrived on the same day, and contained the words "We guarantee all butter sold by us to be absolutely pure." The appellant was not satisfied with this, so a week later, after the delivery of the butter, he induced the seller to add the words "Guaranteed pure butter in accordance with the 3rd and 7th sections of the Margarine Act, 1887." The

butter was adulterated, and the appellant was prosecuted. His solicitors then wrote to the prosecutor giving notice of warranty, and said, "The following is a copy of the warranty," setting out the two sentences above mentioned. The justices thought that this was not a good notice, because it did not correctly set out the words which were on the invoice originally, and because it was not accompanied by a copy of the invoice, and they refused to go into the question of warranty. The High Court held that under all the circumstances of the case the notice was sufficient. WILLS, J., said: "I think s. 20, which requires a copy of the warranty to be delivered to the complainant, did not mean to say that under all circumstances the warranty must be correctly set out where there is room for contention as to what the warranty actually was." And KENNEDY, J., instanced the case of a warranty contained in correspondence where it might be difficult to say what its terms really were. Many other subjects were discussed in the case, but it does not appear to be an authority for anything more than the proposition stated by WILLS, J., above.

(*d*) **Notice to Warrantor.**—The words "within seven days" in the section apply only to the notice to the purchaser. The notice to the warrantor may be given at any time before the justices have to decide whether the warranty is a good defence, subject to their discretion to grant an adjournment if necessary (*Marcus* v. *Crook*, [1914] 3 K. B. 173; 30 T. L. R. 538).

(*e*) **"Appear."**—It is presumed that this entitles the giver of the warranty to appear by counsel or solicitor, and to address the court.

(*f*) **Servant.**—This sub-section was enacted because in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, Lord COLERIDGE, C.J., appears to have held that a servant who is prosecuted for selling an adulterated article is not protected by a warranty given to his master.

(*g*) *Ante*, p. 79.

(*h*) *Ante*, p. 129.

(*i*) See s. 27 of the Act of 1875, *ante*, p. 94, and sub-s. (6) of this section.

(*k*) **Venue of Information.**—The object of this sub-section was to remove the inconvenience caused by the decision in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307, where it was held that the giver of a false warranty must be prosecuted in the place where the warranty was given.

The warranty is not given until it is received by the purchaser. Therefore, where a warranty was attached to a cask of vinegar sent from London to a purchaser at Nuneaton, it was held that proceedings might be taken either in London or at Nuneaton (*Grimble & Co.* v. *Preston*, [1914] 1 K. B. 270; 78 J. P. 72; 83 L. J. K. B. 347; 110 L. T. 115; 30 T. L. R. 119; 12 L. G. R. 382).

But the sub-section only applies if the warranty was given to the person from whom the article in question was purchased for analysis. Thus in *Manners* v. *Tyler*, [1902] 1 K. B. 901; 71 L. J. K. B. 585; 86 L. T. 716; 50 W. R. 604, Manners, in Wiltshire, sold milk to A. in Middlesex with a false warranty. A. sold it unopened to B. in Middlesex with a further warranty. B. was prosecuted under s. 6 of the Act of 1875, set up the warranty from A., and was discharged. A. was then prosecuted in Middlesex for giving a false warranty, set up the warranty from Manners and was discharged. Manners was then prosecuted in Middlesex for giving a false warranty, and objected that there was no jurisdiction. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the objection was good; and CHANNELL, J., said that the defect pointed out in *R.* v. *Smith*, *supra*, was remedied by the present sub-section, but that "the legislature did not consider the case of successive warranties, and did not provide for them." Lord ALVERSTONE, C.J., also pointed out that A. had really been discharged not under s. 25 of the Act of 1875, but under sub-s. (6) of this section, because his real defence was that when he gave the false warranty "he had reason to believe that the statements therein were true," and that he produced the warranty from Manners merely as evidence in support of that defence; therefore sub-s. (3) of this section did not apply to the case at all.

(*l*) **Liability of Limited Company.**—A limited company can be convicted of this offence (*Chuter* v. *Freeth and Pocock, Limited*, [1911] 2 K. B. 832; 75 J. P. 430; 80 L. J.

K. B. 1322; 105 L. T. 238; 27 T. L. R. 467; 9 L. G. R. 1055).

(*m*) **Admissibility of Analyst's Certificate.**—In *R.* v. *Smith* and *Tyler* v. *Kingham, supra,* pp. 72, 73, it was held that the analyst's certificate given for the purpose of prosecuting the retail seller cannot be used as evidence against the wholesale dealer in a prosecution under this sub-section; or, in other words, that the machinery of s. 21 of the Act of 1875, which makes the analyst's certificate "sufficient evidence of the facts therein stated," cannot be used in a prosecution for giving a false warranty. The effect of this is that in a prosecution under this sub-section the analyst must be called to give oral evidence of the result of his analysis; and, of course, evidence must also be forthcoming to show that the sample analysed formed part of the article in respect of which the false warranty was given.

But, apparently, this principle does not apply to certificates obtained for the defence (see the preliminary note to s. 22 of this Act, *post,* p. 169), or to cases where a sample of milk or cream has been taken under the Milk and Dairies (Amendment) Act, 1922 (see s. 13 of that Act, *post,* p. 199).

(*n*) **Time Limit.**—Prosecutions under this sub-section must be instituted within six months from the giving of the false warranty (*Whitaker* v. *Pomfret Brothers,* [1902] 1 K. B. 661; 66 J. P. 408; 71 L. J. K. B. 353; 86 L. T. 420; 50 W. R. 398); except in the case of a continuing warranty for successive deliveries, when the six months run from the date of the delivery in question (*Thomas, Limited* v. *Houghton,* [1911] 2 K. B. 959; 75 J. P. 523; 81 L. J. K. B. 21; 105 L. T. 825; 22 Cox C. C. 628; 9 L. G. R. 1142).

(*o*) **Penalty.**—The defendant may also be imprisoned in certain circumstances. See s. 17 of this Act, *ante,* p. 155.

(*p*) **Scienter.**—In *Derbyshire* v. *Houliston,* [1897] 1 Q. B. 772; 61 J. P. 374; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527, it was held that a defendant could not be convicted of giving a false warranty unless he knew that the statements in the warranty were false. This sub-section goes a step further and enacts that he shall not escape unless he had reason to believe that the statements were true.

In *Oatley* v. *Lemon* (1905), 69 J. P. 163; 92 L. T. 200; 20 Cox C. C. 791; 3 L. G. R. 315, a Derbyshire farmer sold milk with a warranty to a London milkman, delivery to take place at Addison Road Station. On arrival it was found to be adulterated. The milkman was prosecuted, pleaded the warranty and was discharged. On a prosecution for giving a false warranty, the farmer proved that he had reason to believe that the warranty was true when the milk was handed to the railway company in Derbyshire. No evidence was given by the prosecution to show that the farmer had reasonable cause to apprehend that the milk would be tampered with in transit. The magistrate thereupon found as a fact that the farmer had reasonable cause to believe that the warranty was true when the milk arrived at Addison Road, and, therefore, that he was entitled to the protection of the sub-section. The High Court held that under the circumstances the findings were right. See also *Dairy Supply Co., Limited* v. *Houghton* (1911), 76 J. P. 43.

21. *Duty of Court to send Article for Analysis.*—The justices or court referred to in section twenty-two of the Sale of Food and Drugs Act, 1875, shall on the request of either party (*a*) under that section cause an article of food or drug to be sent to the Commissioners of Inland Revenue for analysis, and may, if they think fit, do so without any such request.

(*a*) **Sending Sample to Government Laboratory.**—The request of either party now renders it obligatory to send the sample to the Government Laboratory, whereas, under s. 22 of the Act of 1875, the justices or court had a discretion in the matter. They have still that discretion where there is no request.

If the justices are requested to send the sample, but are unable to do so because it has been accidentally lost or destroyed, the defendant cannot be convicted (*Hutchison* v. *Stevenson* (1902), 4 Fraser (J.C.), 69; 3 Adam, 651; 39 Sc. L. R. 789).

But it is no objection that the condition of the sample has

accidentally become such that it cannot be analysed. See the note (*i*) to s. 14 of the Act of 1875, *ante*, p. 59.

The certificate of the Government analyst need not be in the form prescribed by the Act of 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129).

22. *Provisions as to Certificates of Analysis.*—(1) At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in section eighteen of the Sale of Food and Drugs Act, 1875 (*a*), shall be sufficient evidence (*b*) of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.

(2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

Application of Section.—This section is complementary to s. 21 of the Act of 1875, *ante*, p. 72. There is, however, this difference between the two sections: this section applies to all proceedings under the Acts, whereas s. 21 of the Act of 1875 has been said to apply only to proceedings under s. 20 of that Act. See note (*b*) to s. 21 of the Act of 1875, *ante*, p. 72. As to certificates respecting milk and cream, see also s. 13 of the Milk and Dairies (Amendment) Act, 1922, *post*, p. 199.

(*a*) *Ante*, p. 68. Under s. 8 and Sched. III. of the Milk and Dairies Act, 1915, *post*, pp. 243, 255, analyses of samples which are not the subject of the proceedings will, when the Act comes into force, be made admissible in evidence under certain circumstances, but it is not clear whether this section has that effect, or whether it is confined to the analysis of the part of the sample originally handed to the vendor.

(*b*) **Sufficient Evidence.**—Of course the certificate referred to in this section, like the certificate produced by the prosecution, is not conclusive. If certificates are produced on both sides the magistrates will have to determine which is the more reliable. See also note (*c*) to s. 21 of the Act of 1875, *ante*, p. 74.

23. *Transfer of Powers from Secretary for Scotland to Local Government Board.*—This Act shall apply to Scotland with the substitution for "the Local Government Board" of "the Local Government Board for Scotland," and all powers and duties vested in or imposed on the Secretary for Scotland in relation to the Sale of Food and Drugs Acts shall be transferred to, vested in, or imposed on the Local Government Board for Scotland.

24. *Application to Ireland.*—This Act shall apply to Ireland with the substitution for "the Board of Agriculture" of "the Department of Agriculture and Technical Instruction for Ireland," and for "the Local Government Board" of "the Local Government Board for Ireland," and for "the London and Edinburgh Gazette" of "the Dublin Gazette."

25. *Interpretation of Terms.*—In this Act, unless the context otherwise requires—

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk:

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk:

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts (*a*), and the expression "public analyst" means an analyst so appointed:

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts (*b*).

(*a*) See s. 10 of the Act of 1875, *ante*, p. 45.

(*b*) It is not quite clear what the effect of these last words is. See the last paragraph of note (*b*) to s. 25 of the Act of 1875, *ante*, p. 80, and *Rex* v. *Otto Monsted, Limited*, *ante*, p. 78.

They do not give a right of appeal to quarter sessions in prosecutions by the Commissioners of Customs under s. 1 of this Act (*Rex* v. *Otto Monsted, Limited*, *ante*, p. 78).

26. *Definition of "Food."*—For the purposes of the Sale of Food and Drugs Acts the expression "food" shall include every article used for food (*a*) or drink by man, other than drugs or water (*b*), and any article which ordinarily enters into or is used in the composition or preparation of human food (*c*); and shall also include flavouring matters and condiments.

(*a*) **Used for Food.**—Chewing gum is not an article used for food within the meaning of this section (*Shortt* v. *Smith* (1895), 11 T. L. R. 325; *Bennett* v. *Tyler* (1900), 64 J. P. 119; 81 L. T. 787; 19 Cox C. C. 434).

It is not clear whether "used for food" means "intended for use as food" or "capable of being used for food." As to this see the cases cited in note (*b*) to s. 2 of the Act of 1875, *ante*, p. 3.

(*b*) **"Water."**—By s. 70 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), provision has been made for the

analysis of water, including water likely to be used in the manufacture of drinks. As to distilled water, see note (*b*) to s. 2 of the Act of 1875, *ante*, p. 4.

(*c*) **Extension of Definition.**—The addition of the words " and any article which ordinarily enters into or is used in the composition or preparation of human food," etc., is due to the decision in the case of *James* v. *Jones* (1894), 58 J. P. 230, in which it was held that baking powder made up of 20 per cent. of bicarbonate of soda, 40 per cent. of alum, and 40 per cent. of ground rice, was not an article of food within the meaning of the repealed section (s. 2 of the Act of 1875). The effect of this decision (see the judgment of the court delivered by Hawkins, J.) was to narrow the scope of the Act very considerably. A similar decision had previously been given by the Recorder of Cambridge in *Warren* v. *Phillips* (1880), 44 J. P. 61. The Select Committee on Food Products Adulteration in 1896 noted these decisions with regret, and recommended the extension of the definition, which, as it now stands, is very wide.

27. *Repeal of Enactments in Schedule.*—[*The enactments in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.*]

This section is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49), but this, of course, does not revive the enactments here repealed.

28. *Short Title and Commencement.*—(1) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.

(2) [*This Act shall come into operation* (*a*) *on the first day of January one thousand nine hundred.*]

Sub-section (2) is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

(*a*) In *Batt* v. *Mattinson* (1900), 64 J. P. 615; 82 L. T. 800; 19 Cox C. C. 532, an offence under s. 6 of the Act of 1875 was committed on December 19th, 1899. On January 8th, 1900, a summons was issued, returnable on the 19th. RIDLEY and PHILLIMORE, JJ., held that the procedure was to be regulated by the Act of 1899, although the offence had been committed before the Act came into operation.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
38 & 39 *Vict.* c. 63	*The Sale of Food and Drugs Act*, 1875.	*In section two, the definition of the term "food."* *In section fourteen, the words "offer to," and the words "proceed accordingly and shall."* *Section fifteen.* *In section twenty-seven, the words from "Every person who shall give a false warranty in writing" to "a penalty not exceeding twenty pounds."*
42 & 43 *Vict.* c. 30	*The Sale of Food and Drugs Act Amendment Act*, 1879.	*Section ten.*
50 & 51 *Vict.* c. 29	*The Margarine Act*, 1887.	*In section six, the words "or with," and the words "not less than a quarter of an inch square."*
54 & 55 *Vict.* c. 46	*The Post Office Act*, 1891.	*Section eleven.*

The Schedule is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

THE BUTTER AND MARGARINE ACT, 1907.

(7 Edw. 7, c. 21.)

An Act to make further provision with respect to the Manufacture, Importation, and Sale of Butter and Margarine and Similar Substances.

[21st August, 1907.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Registration of Factories and Consignments.*— (1) The provisions of section nine of the Margarine Act, 1887 (*a*), as amended by section seven of the Sale of Food and Drugs Act, 1899 (*b*), relating to the registration of manufactories of margarine, shall, with the necessary adaptations, apply to—

(a) Butter factories, that is to say, any premises on which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter ; and

(b) Any premises on which there is manufactured any milk-blended butter (that is to say, any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream) or on which there is carried on the business of a wholesale dealer in milk-blended butter.

(2) The provisions of section seven of the Sale of Food and Drugs Act, 1899 (*b*), relating to registers of consignments of margarine, shall, with the necessary adaptations, apply to consignments of milk-blended butter.

(3) Premises shall not be used as a butter factory if they form part of or communicate, otherwise than by a public street or road, with any other premises which are required to be registered under the Sale of Food and Drugs Acts (*c*) or under paragraph (b) of this section, and if any premises are so used the occupier thereof shall be guilty of an offence under this Act (*d*), and the local authority shall remove from the register of butter factories kept by them any premises used as a butter factory contrary to this provision :

Provided that this sub-section shall not apply to premises which on the first day of January one thousand nine hundred and seven were being used as a butter factory and formed part of or communicated with premises which were then registered under the Sale of Food and Drugs Acts, if and so long as the Board ot Agriculture and Fisheries so direct.

(*a*) *Ante*, p. 131.

(*b*) *Ante*, p. 148.

(*c*) **Premises Required to be Registered.**—That is, the premises of manufacturers of, or wholesale dealers in, margarine or margarine-cheese. See s. 9 of the Margarine Act, 1887, and ss. 5 and 7 (4) of the Act of 1899, *ante*, pp. 131, 146, 149.

(*d*) **Penalty.**—See s. 11, *post*, p. 185.

2. *Inspection of Factories.*—(1) Any officer of the Board of Agriculture and Fisheries or of the Local

Government Board shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act, and to inspect any process of manufacture, blending, reworking, or treatment used therein, and to take samples (*a*) for analysis of any butter, margarine, margarine-cheese, milk-blended butter (*b*), or of any article capable of being used in the manufacture, treatment, or adulteration of any such article as aforesaid.

(2) An officer of a local authority (*c*) who is authorised to procure samples under the Sale of Food and Drugs Acts shall, if specially authorised in that behalf by the local authority, have the like powers of entry, inspection, and sampling as regards any premises registered with the authority as a butter factory.

(3) If the Board of Agriculture and Fisheries have reason to believe—

(a) that on any unregistered premises there is carried on any process of manufacture, blending, reworking, or treatment or any wholesale dealing which under the Sale of Food and Drugs Acts or this Act cannot be carried on except on registered premises ; or

(b) that on any premises butter is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable,

the Board may specially authorise any officer of the Board to enter the premises, and in such case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered.

(4) Where under this section a special authority is required, an officer of the Board or of a local authority shall not be entitled to exercise any of his powers under this section unless, if so requested by or on behalf of the occupier of the premises to be entered, he produces his authority.

(5) Sub-section (2) of section seven of the Sale of Food and Drugs Act, 1899, is hereby repealed.

Offences.—It is singular that the Sale of Food and Drugs Acts do not contain any general provision imposing a penalty upon persons who have in their possession adulterated articles of food for the purpose of sale. If, therefore, the result of the inspection and sampling is to discover adulterated butter, etc., no proceedings can be taken unless the case can be brought within one of the following sections, viz., Act of 1907, s. 3 (substances intended to be used for adulteration), s. 4 (butter, margarine, etc., containing more than the statutory amount of water), s. 7 (butter, etc., containing unlawful preservatives), ss. 8, 9 (margarine and milk-blended butter dealt with under unlicensed names); Act of 1875, s. 3 (mixing food with injurious ingredients), s. 9 (injurious abstractions from food); Margarine Act, 1887, s. 6 (cases not properly marked); Act of 1899, s. 8 (margarine containing more than 10 per cent. of butter fat), and, possibly, s. 1 of the Act of 1899 (margarine, etc., imported in unmarked cases).

Obstructing Officer.—For penalty, see s. 16 of the Act of 1899, *ante*, p. 154.

(*a*) **Taking Samples.**—Public officers need not follow the procedure laid down by s. 14 of the Act of 1875, *ante*, p. 53 (*Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134, following *Rouch* v. *Hall* (1880), 6 Q. B. D. 17; 45 J. P. 220; 50 L. J. M. C. 6; 29 W. R. 304). Officers of the Local Government Board and Board of Agriculture probably ought to follow s. 2 of the Act of 1899, since by s. 14, *post*, the Acts of 1899 and 1907 are to be read together. But the question is doubtful.

(*b*) **Milk-blended Butter.**—For definition, see s. 1 (1), *ante*.

(*c*) **Authorised Officer.**—See s. 13 of the Act of 1875, *ante*, p. 49.

3. *Prohibition of Adulterants in Butter Factories.*—If any substance intended to be used for the adulteration of butter is found in any butter factory, the occupier (*a*) of the factory shall be guilty of an offence under this Act (*b*), and if any oil or fat capable of being so used is found it shall be deemed to be intended to be so used, unless the contrary is proved.

It should be observed that the section does not in terms provide for the case of butter being found already mixed with an adulterant, and it is, to say the least, doubtful whether the courts would hold that the words are wide enough to cover such a state of things. It is, therefore, suggested that if adulterated butter is found in a factory, no offence has been committed by the occupier unless the case can be brought within one of the provisions enumerated in the preliminary note to the last section.

No analysis appears to be necessary to establish this offence.

(*a*) **Occupier—Actual Offender.**—Where the offence has been committed without the knowledge of the occupier by some other person, the actual offender is the person to be punished. See s. 5 of the Margarine Act, *ante*, p. 125, and s. 11 (2) of this Act, *post*, p. 186.

(*b*) **Penalty.**—See s. 11, *post*, p. 185.

4. *Limit of Moisture in Butter, Margarine, and Milk-blended Butter.*—(1) If any butter which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any butter factory, or if any margarine which, when prepared for sale or consignment (*a*), contains more than sixteen per cent. of water is in any margarine fac-

tory, or if any such butter or margarine is consigned from a butter factory or margarine factory, the occupier (*b*) of the factory or consignor, as the case may be, shall (whether the excess of moisture is due to adulteration or not) be guilty of an offence under this Act (*c*), unless the occupier or consignor proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked, or treated in the factory.

(2) Any person (*b*) who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any milk-blended butter (*c*) which contains more than twenty-four per cent. of water, shall be guilty of an offence under this Act (*d*).

(*a*) **Consignment.**—For further restrictions on the consignment of margarine and milk-blended butter, see s. 8 of the Margarine Act, *ante*, p. 130, and s. 9 (2) of this Act, *post*, p. 184. These enactments also permit samples of such consignments to be taken in transit.

(*b*) **Conviction of Actual Offender.**—See note (*a*) to the last section.

(*c*) **Milk-blended Butter.**—For definition, see s. 1 (1), *ante*, p. 174.

(*d*) **Penalty.**—See s. 11, *post*, p. 185.

5. *Provisions as to the Importation of Butter, Margarine, and Milk-blended Butter.*—(1) There shall be included in the list of articles importation of which is made an offence by section one of the Sale of Food and Drugs Act, 1899 (*a*), the following articles :

(e) Butter containing more than sixteen per cent. of water ;

(f) Margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter fat ;

(g) Milk-blended butter containing more than twenty-four per cent. of water ;

(h) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture and Fisheries for the purpose (*b*) ;

(j) Butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation (*c*) ;

and in the said section the words " adulterated or impoverished butter (other than margarine) or," and the words " butter or " shall be repealed.

(2) The maximum fine for an offence under the said section one, as amended by this section, shall, where the article in respect of which the offence was committed is butter, margarine, margarine-cheese, or milk-blended butter, be either such as is provided in the said section one (*d*), or, at the election of the Commissioners of Customs, a fine equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind but of the best quality were sold at or about the time of the importation.

(3) In any proceeding under the said section one as amended by this section the certificate of the principal chemist of the Government laboratories, or, if the person who made the analysis be called as

a witness, the evidence of that person, that an imported substance is margarine or milk-blended butter shall raise a presumption, until the contrary is proved, that the substance is margarine or milk-blended butter, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) Where a sample taken under the said section one as amended by this section is certified by the principal chemist to be margarine or milk-blended butter the Commissioners of Customs shall upon receiving the certificate forthwith notify the importer thereof.

For definition of "margarine," see s. 13 (1), *post*, p. 187, and "milk-blended butter," s. 1 (1), *ante*, p. 174.

(*a*) *Ante*, p. 135.

(*b*) See s. 9, *post*, p. 183.

(*c*) **Regulations as to Preservatives.**—See s. 7, *post*, p. 182.

(*d*) See the last paragraph of s. 1 (1) of the Act of 1899, *ante*, p. 136.

6. *Regulations as to Milk-solids in Butter.*—The power of making regulations under section four of the Sale of Food and Drugs Act, 1899 (*a*), shall extend to making regulations as to the proportion of any milk-solid other than milk-fat in any sample of butter or milk-blended butter (*b*).

(*a*) *Ante*, p. 145.

(*b*) For definition of "milk-blended butter," see s. 1 (1), *ante*, p. 174.

7. *Regulations as to Preservatives.*—(1) The Local Government Board may, after such inquiry as they deem necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which, either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine, or milk-blended butter.

(2) Any regulations made under this section shall be notified in the London, Edinburgh, or Dublin Gazette as the case may require, and shall also be made known in such other manner as the Local Government Board may direct.

(3) Any person who manufactures, sells, or exposes (*a*) or offers for sale (*b*), or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section or an amount of a preservative in excess of the limit allowed by any such regulation, shall be guilty of an offence under this Act (*c*).

For definition of "margarine," see s. 13 (1), *post*, p. 187, and "milk-blended butter," s. 1 (1), *ante*, p. 174.

(*a*) **"Exposes for Sale."**—For meaning, see note (*d*) to s. 6 of the Margarine Act, *ante*, p. 126.

(*b*) **"Offers for Sale."**—For meaning, see note (*a*) to s. 7 of the Margarine Act, *ante*, p. 130.

(*c*) **Penalty.**—See s. 11, *post*, p. 185.

8. *Marking of Wrappers, etc., used in connection with Margarine.*—If in any wrapper enclosing margarine, or on any package containing margarine, or on any label attached to a parcel of margarine (*a*), or in any advertisement or invoice of margarine a person dealing in margarine describes it by any name other than either "margarine," or a name combining the word "margarine" with a fancy or other descriptive name (*b*) approved by the Board of Agriculture and Fisheries and printed in type not larger than and in the same colour as the word "margarine," he shall be guilty of an offence under this Act (*c*).

For definition of "margarine," see s. 13 (1), *post*, p. 187.

This section does not repeal s. 6 of the Act of 1899, *ante*, p. 147, and therefore the two sections must be read together (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89; 80 L. J. K. B. 545; 104 L. T. 178; 9 L. G. R. 178, and *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111; 10 L. G. R. 127).

(*a*) **"Wrapper"—"Package"—"Label."**—For further enactments respecting these, see s. 6 of the Margarine Act, *ante*, p. 125, and ss. 1 and 6 of the Act of 1899, *ante*, pp. 135, 147.

(*b*) **"Fancy Name."**—Restrictions are placed upon the use of fancy names by s. 10, *infra*.

For instances of the use of fancy names before this Act, see note (*c*) to s. 3 of the Margarine Act, *ante*, p. 123.

This section, contrary to its apparent meaning, does not authorise the use of approved fancy names on the wrapper (*Williams* v. *Baker* and *Millard* v. *Allwood*, *supra*).

(*c*) **Penalty.**—See s. 11, *infra*.

9. *Regulation of Sale of Milk-blended Butter.*—(1) Milk-blended butter shall be dealt with under such name or names (*a*) as may be approved by the

Board of Agriculture and Fisheries and under the conditions applicable to the sale or description of margarine (*b*), with the substitution of an approved name for the word "margarine," and with this modification, that, in any case where, in order to comply with those conditions, the article is delivered to the purchaser in a wrapper, there shall, in addition to the approved name, be printed on the wrapper in such manner as the Board approve such description of the article, setting out the percentage of moisture or water contained therein, as may be approved by the Board.

(2) Milk-blended butter, whenever forwarded by any public conveyance, shall be duly consigned under the name which, as respects the article consigned, has been approved by the Board under this section; subject to this modification, section eight of the Margarine Act, 1887 (*c*), shall apply to milk-blended butter in like manner as it applies to margarine.

(3) If any person deals with, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, or describes any milk-blended butter contrary to the provisions of this section, he shall be guilty of an offence under this Act (*d*), but any defence which would be a defence under section seven of the Margarine Act, 1887 (*e*), as respects margarine, shall be a defence under this section as respects milk-blended butter.

For definition of "milk-blended butter," see s. 1 (1), *ante*, p. 174.

(*a*) **Names for Milk-blended Butter.**—See the next section. Query, whether the name may be used on the wrapper in

which the substance is sold. See *Williams* v. *Baker* and *Millard* v. *Allwood*, *ante*, p. 183, and note (*b*), *infra*.

(*b*) **Under Conditions applicable to Sale of Margarine.**—This is a very vague expression. It appears to extend, *mutatis mutandis*, to milk-blended butter all the provisions of the Acts of 1887, 1899 and 1907 which relate to the sale of margarine, but if this is so sub-s. (3) seems unnecessary. At any rate, it must apply s. 6 of the Margarine Act, which deals with the marking, labelling, etc., of margarine.

(*c*) *Ante*, p. 130. It deals with consignments of margarine, and taking samples in transit.

(*d*) **Penalty.**—See s. 11, *post*.

(*e*) *Ante*, p. 129. The warranty defence. But by the joint effect of this sub-section on the one hand and s. 11 (2) of this Act, s. 12 of the Margarine Act, and s. 25 of the Act of 1875 on the other, the vendor, etc., of adulterated milk-blended butter seems to have his choice between the warranty sections of the Act of 1875 and the Margarine Act.

10. *Names of Margarine, etc.*—A name shall not be approved by the Board of Agriculture and Fisheries for use in connection with margarine if it refers to or is suggestive of butter or anything connected with the dairy interest, nor shall such a name be approved as a name under which milk-blended butter may be imported or dealt with.

For definition of "margarine," see s. 13 (1), *post*, p. 187, and "milk-blended butter," s. 1 (1), *ante*, p. 174.

11. *Penalties for Offences.*—(1) Any person guilty of an offence under this Act shall be liable on conviction under the Summary Jurisdiction Acts for a first offence to a fine not exceeding twenty pounds and for a second offence to a fine not exceeding fifty pounds and for a third or any subsequent offence to

a fine not exceeding one hundred pounds, and in cases where imprisonment can be inflicted under section seventeen of the Sale of Food and Drugs Act, 1899 (*a*), to such imprisonment as is by that section authorised.

(2) Section five of the Margarine Act, 1887 (*b*) (which exempts employers from liability in certain cases), and section eleven of the same Act (which relates to the appropriation of penalties), and section twelve of the same Act (*c*) (which relates to proceedings under that Act), shall apply to proceedings under this Act, with the substitution of references to this Act for references to the Margarine Act, 1887 (*d*).

(*a*) *Ante*, p. 155. It must be on a second or subsequent conviction, and the offence must have been committed by the personal act, default, or culpable negligence of the accused.

(*b*) *Ante*, p. 125.

(*c*) *Ante*, p. 133.

(*d*) **Effect of Sub-section.**—This is a curious example of legislation by double reference, for s. 12 of the Margarine Act itself incorporates certain sections of the Act of 1875. It should be noted that by s. 14 (1), *post*, p. 187, the Acts of 1899 and 1907 are to be construed as one, and the joint effect of these two sub-sections seems to be that ss. 12 to 28 inclusive of the Act of 1875, ss. 5 and 12 of the Margarine Act, and the whole of the Acts of 1899 and 1907 are to be read together as one Act. If this is so, it forms a very ill-digested enactment, for in several cases it will be found that there are duplicate provisions expressed in different language covering the same ground. Instances which have occurred to the present editor will be found in note (*b*) to s. 25 of the Act of 1899, note (*a*) to s. 2, and note (*e*) to s. 9 of this Act, and more may be found hereafter. The difficulty thus created was discussed in *Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134.

12. *Amendment of s.* 8 *of Margarine Act,* 1887.—Except in the Administrative County of London, section eight of the Margarine Act, 1887 (*a*), shall have effect as if the words "inspector of weights and measures" were inserted after the word "nuisances."

(*a*) *Ante*, p. 130.

13. *Definition of Margarine.*—(1) For the purposes of the Sale of Food and Drugs Acts and this Act the expression "margarine" shall mean any article of food, whether mixed with butter or not, which resembles butter (*a*) and is not milk-blended butter.

(2) The above definition shall be substituted for the definition of margarine in the Margarine Act, 1887.

(*a*) **"Resembles Butter."**—These words are wider than those in the old definition, which were "prepared in imitation of butter."

The old definition and the cases under it, some of which are applicable to the present one, will be found on pp. 122, 123, *ante*.

14. *Short Title, Construction, and Commencement.*—(1) This Act may be cited as the Butter and Margarine Act, 1907, and shall be construed as one with the Sale of Food and Drugs Act, 1899 (*a*), and may be cited with the Sale of Food and Drugs Acts as the Sale of Food and Drugs Acts, 1875 to 1907.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(*a*) For the effect of this provision, see note (*d*) to s. 11, *ante*, p. 186.

THE LICENSING ACT, 1921.

(11 & 12 GEO. 5, c. 42.)

[17th August, 1921.]

. . . . . .

10. In determining whether an offence has been committed under the enactments relating to the sale of food and drugs by selling to the prejudice of the purchaser whisky, brandy, rum or gin not adulterated otherwise than by any admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than thirty-five degrees under proof, and section six of the Sale of Food and Drugs Act, 1879 (*a*), is hereby repealed.

. . . . . .

(*a*) See p. 118, *ante*. The notes to that section apply here *mutatis mutandis*.

THE MILK AND DAIRIES (AMENDMENT) ACT, 1922.

(12 & 13 Geo. 5, c. 54.)

An Act to postpone for a further period the operation of the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies (Scotland) Act, 1914, to make further provision with regard to the sale of milk and for purposes connected therewith.

[4th August, 1922.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Postponement of 5 & 6 Geo. 5, c. 66 ; 4 & 5 Geo. 5, c. 49 ; 5 & 6 Geo. 5, c. 59.*—The Milk and Dairies (Consolidation) Act, 1915 (*a*), shall, notwithstanding anything contained in section twenty-one of that Act, not come into operation before the first day of September, nineteen hundred and twenty-five, except in so far as it repeals the Milk and Dairies Act, 1914, and the Milk and Dairies Acts Postponement Act, 1915.

(*a*) See p. 238, *post.*

2. *Power to refuse Registration of, or remove from Register, Retailers of Milk.*—(1) Any local authority (*a*) by whom a register of purveyors of milk is kept under or in pursuance of any enactment in that

behalf (*b*), may, if they are satisfied that the public health is or is likely to be endangered by any act or default of any person who is registered or who seeks to be registered therein as a retail purveyor of milk, in relation to the quality, storage or distribution of milk, serve upon him a notice to appear before them not less than seven days after the date of the notice to show cause why the local authority should not, for reasons to be specified in the notice, refuse to register him or remove him from the register, as the case may be, either absolutely or in respect of any specified premises, and if he fails to show cause to their satisfaction accordingly they may refuse to register him or remove him from the register, as the case may be.

Any person aggrieved by any such decision of the local authority as aforesaid may, within twenty-one days, give notice of appeal to a court of summary jurisdiction, and that court may require the local authority to register such person or not to remove him from the register.

The local authority or such person as aforesaid may appeal from the decision of the court of summary jurisdiction to the next practicable court of quarter sessions, who may confirm or reverse the order of the court of summary jurisdiction.

The decision of a local authority to refuse registration or to remove any person from the register under this section shall not have effect until the expiration of the time for appeal to a court of summary jurisdiction nor, where any such appeal is brought, until the appeal is determined ; and where notice of appeal from a court of summary jurisdic-

tion under this section is given within seven days from the date thereof, such decision of the local authority as aforesaid shall not take effect until the appeal to quarter sessions is finally determined.

Where the appeal is from a refusal to register, such person as aforesaid may, until the appeal is finally determined, carry on business as a purveyor of milk notwithstanding that he is not registered.

(2) The court before whom any person registered as a purveyor of milk is convicted of any offence under this Act, or any other enactment relating to milk and dairies, or any order or regulations made thereunder, may, on the application of the local authority, in addition to any other penalty, order the removal from the register of the person so convicted either absolutely or in respect of any specified premises for such period as the court may think fit.

(3) Any enactment or order requiring a local authority to keep a register of persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk shall have effect as if it required the local authority to keep a register of persons carrying on the trade of retail purveyors of milk and a separate register of persons carrying on any other trade to which the enactment or order relates, and this section shall apply only to the first-mentioned of those registers.

(*a*) **Local Authority.**—*I.e.*, in the City of London, the Common Council; in boroughs of more than 10,000 population, the borough council; elsewhere the county council. See Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 3, and Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 39.

(*b*) **Register of Milk Purveyors.**—This is kept by the local authorities mentioned above in accordance with the

Dairies, Cowsheds and Milk Shops Order, 1885, made by the Privy Council under the Contagious Diseases (Animals) Act, 1878.

3. *Licences by Minister of Health to sell Milk under Special Designations.*—(1) A person shall not, either by himself or by any servant or agent, except under and in accordance with a licence granted by the Minister of Health, or with his authority under the provisions of an order (*a*) made by him under this Act—

(*a*) sell or offer or expose for sale any milk as "certified," "Grade A.," "pasteurised" or under such other designation as may be from time to time prescribed by order of the Minister; or

(*b*) on or in connection with any sale or offer for sale or proposed sale of any milk or in any advertisement, circular, or notice relating to any milk, describe or refer to the same as "certified," "Grade A.," "pasteurised" or by any other designation prescribed as aforesaid, or use any description or designation including or resembling any such description or designation.

(2) A licence may be granted for the purposes of this section for such period and subject to such terms and conditions (including conditions as to the payment of fees) as may be prescribed by an order (*a*) made under this Act.

(3) This section shall come into operation on the first day of January, nineteen hundred and twenty-three, and until that date the provisions of the Milk (England and Wales) Order, 1921, and the Local

Authorities (Milk) Order, 1921, relating to the sale of milk under special designations or to the matters connected therewith, shall continue in force, and shall have effect as if they were enacted in this Act.

This section is enforced by the local authority charged with the execution of the Sale of Food and Drugs Acts. See s. 10, *post*, p. 196.

(*a*) See the Milk (Special Designations) Orders of 1922, *post*, pp. 338, 349, which, *inter alia*, authorise local authorities to grant licences for the sale of milk under special designations.

4. *Prohibition of Addition of Colouring Matter, etc.* —(1) No person shall add any colouring matter or water or any dried or condensed milk or any fluid reconstituted therefrom or any skimmed milk or separated milk to milk intended for sale, and no person shall, either by himself or by any servant or agent, sell, or offer or expose for sale, any milk to which any such addition has been made.

(2) No person either by himself or any servant or agent shall sell, or offer or expose for sale, as milk any liquid in the making of which dried milk or condensed milk has been used.

(3) For the purposes of this section, except as regards the addition of skimmed or separated milk, milk includes skimmed milk and separated milk.

This section is enforced by the local authority charged with the execution of the Sale of Food and Drugs Acts. See s. 10, *post*, p. 196.

5. *Prohibition of Sale of Tuberculous Milk.*— (1) No person shall, by himself or by any servant or agent, sell or offer or expose for sale the milk of a cow suffering from tuberculosis of the udder, and he shall be guilty of an offence under this section if it is

proved that he knew or could by the exercise of ordinary care have ascertained that the cow was suffering from that disease.

(2) If any person is guilty of an offence under this section, he shall be liable on summary conviction for a first offence to a fine not exceeding twenty pounds, and for a second or subsequent offence to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour for a period of six months, or to both such fine and imprisonment.

This section is enforced by the Sanitary Authority. See s. 10, *post*, p. 196.

6. *Milk and Dairy Orders to be laid before Parliament.*—All orders relating to milk and dairies made by the Minister of Health under this Act or under any other enactment shall be laid before each House of Parliament as soon as may be after they are made ; and, if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty days on which that House has sat next after the order is laid before it praying that the order may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new order. If the session of Parliament ends before such twenty days as aforesaid have expired, the order shall be laid before each House of Parliament at the commencement of the next session as if it had not previously been laid.

Any order made under this Act may be varied or revoked by an order made in the same manner and subject to the same provisions as the original order.

7. *Orders to be made with Concurrence of Minister of Agriculture and Fisheries.*—Any order made after the commencement of this Act by the Minister of Health under section thirty-four of the Contagious Diseases (Animals) Act, 1878 (*a*), as amended by the Contagious Diseases (Animals) Act, 1886 (*b*), shall be made with the concurrence of the Minister of Agriculture and Fisheries.

(*a*) 41 & 42 Vict. c. 74.

(*b*) 49 & 50 Vict. c. 32.

8. *Regulations by Minister of Health.*—(1) The Minister of Health shall make regulations under the Public Health (Regulations as to Food) Act, 1907 (*a*), for the prevention of danger arising to public health from the importation of milk intended for sale for human consumption or for use in the manufacture of products for human consumption.

(2) Sub-section (1) of section one of the said Act shall have effect as though at the end thereof the following paragraph were added :—

(d) provide for the manner in which any tin or other receptacle containing dried, condensed, skimmed, or separated milk is to be labelled or marked, and prescribe the minimum percentages of milk fat and milk solids in dried or condensed milks.

(*a*) 7 Edw. 7, c. 32.

9. *Penalties.*—(1) If any person is guilty of a contravention of, or non-compliance with, the provisions of this Act or any of them, he shall, save as otherwise provided in this Act (*a*), be liable on sum-

mary conviction to a fine not exceeding, in the case of a first offence five pounds, and, in the case of a second or subsequent offence, fifty pounds, and, if the offence is a continuing offence, to a further fine not exceeding forty shillings for each day during which the offence continues.

(2) Where it appears to a local authority (*b*) that an offence has been committed in respect of which proceedings might be taken under this Act against a purveyor of milk, the local authority shall, if reasonably satisfied that the offence of which complaint is made was due to an act or default of a servant or agent without the knowledge, consent, or connivance of his employer, take proceedings against the servant or agent without first proceeding against his employer.

(3) A person shall not be convicted of any offence under any enactment relating to the sale of milk in respect of a sample of milk taken after the milk has left his custody and control, if it is proved to the satisfaction of the court that the churn or other receptacle in which the milk was contained was effectively closed and sealed at the time when it left his custody and control, but was not so closed and sealed at the time when it reached the person by whom the sample was taken.

(*a*) **Exception.**—Special penalties are provided by s. 5, *ante*, p. 193, for the sale of tuberculous milk.

(*b*) **Local Authority.**—See the next section.

10. *Administration of Act.*—(1) The local authority for the purpose of the enforcement of sections three and four of this Act (*a*) shall be the same as the

local authority concerned with the enforcement of the Sale of Food and Drugs Acts, 1875 to 1907 (including an authority empowered by section thirteen of the Sale of Food and Drugs Act, 1875 (*b*), to give directions to the officers named therein to procure samples of food or drugs), and the local authority for the enforcement of section five of this Act (*c*) shall be the sanitary authority:

Provided that, where a local authority have been authorised by the Minister to grant licences under section three of this Act, that local authority shall also be a local authority for the purpose of the enforcement of that section.

(2) The expenses incurred by a local authority authorised to grant licences under section three, or incurred by a local authority under sections two and five, of this Act, shall be defrayed, in the case of a county council out of the county fund as expenses for general county purposes, and in the case of a sanitary authority as part of their general expenses in the execution of the enactments relating to public health, and any other expenses incurred by a local authority under this Act shall be defrayed in the same manner as expenses for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907.

(*a*) *Ante*, pp. 192, 193.

(*b*) *Ante*, p. 49.

(*c*) *Ante*, p. 193.

11. *Transfer of Powers under Act to County Council.*—(1) If a local authority fail to fulfil any of their duties under this Act or under any order relating to milk and dairies made by the Minister of Health, the

Minister may, after holding a local inquiry, make such order as he thinks necessary or proper for the purpose of compelling the authority to fulfil their duties, and any such order may be enforced by mandamus.

(2) If a county council resolve that a district council within the county have failed to exercise or perform any of their powers or duties under this Act or any enactments relating to milk and dairies, or any order or regulations made thereunder, and make complaint thereof to the Minister of Health, the Minister may after such inquiry as he deems necessary by order determine that all or any of the said powers or duties be transferred to the county council either for a definite period or until the Minister shall otherwise direct, and those powers and duties shall be transferred accordingly, and section sixty-three of the Local Government Act, 1894 (*a*), shall apply as if the powers and duties had been transferred under that Act with such modifications and adaptations as appear necessary or expedient.

(*a*) 56 & 57 Vict. c. 73.

12. *Provisions as to Breaches of Contract.*—Where the registration of a retailer is refused, or a retailer is removed from a register, under this Act (*a*), the retailer shall not be liable to any action for breach of a contract for the purchase of further supplies of milk from a producer, if he can prove that such refusal or removal was due to the quality of milk supplied by the producer.

(*a*) See s. 2, *ante*, p. 189.

13. *Certificate of Analyst* primâ facie *Evidence.*—At the hearing of the information in any proceedings under section four of this Act (*a*), the production of the certificate of an analyst (*b*) acting under the Sale of Food and Drugs Acts, 1875 to 1907, for the place in which the sample was taken, shall be sufficient evidence of the facts stated therein unless the defendant shall require that the analyst shall be called as a witness.

(*a*) *Ante*, p. 193.

(*b*) **Analyst's Certificate.**—See s. 21 of the Act of 1875, *ante*, p. 72.

14. *Application to Scotland.*—This Act shall apply to Scotland, with the following modifications :—

(a) The Scottish Board of Health (hereinafter in this section referred to as "the Board") shall be substituted for the Minister of Health.

(b) The following section shall be substituted for section one :—

"1.—(1) The Milk and Dairies (Scotland) Act, 1914, shall come into operation on the appointed day being a day not before the first day of September, nineteen hundred and twenty-five, and the appointed day shall be such day as the Board may by order appoint, and different days may be appointed for different purposes and for different provisions of that Act (including the repeal of different enactments).

(2) The Milk and Dairies Acts Post-

ponement Act, 1915, so far as the same applies to Scotland, is hereby repealed."

(c) The expression "court of summary jurisdiction" means the sheriff, and the provisions of section two of this Act regarding appeals to quarter sessions shall not apply provided that any decision by a sheriff-substitute under the said section may be appealed to the sheriff if notice of appeal is given within seven days of such decision.

(d) Sub-section (1) of section three of this Act shall have effect as if there were inserted after the term "certified," wherever the same occurs therein, the term "Grade A. (tuberculin tested)." In sub-section (3) of section three of this Act references to the Milk (Scotland) Order, 1921, the Local Authorities (Milk) (Scotland) Order, 1921, the Milk (Local Authorities) (Scotland) Order, 1920, and the Local Authorities (Milk) (Scotland) Order, 1920, shall be substituted for references to the Milk (England and Wales) Order, 1921, and the Local Authorities (Milk) Order, 1921.

(e) In sub-section (2) of section nine of this Act references to the procurator-fiscal shall be substituted for references to the local authority.

(f) The following sub-section shall be substituted for section ten of this Act :—

The provisions of this Act shall be enforced by the local authorities under the Public Health (Scotland) Act, 1897,

and any expense thereby incurred shall be defrayed out of the public health general assessment.

(g) Section eleven of this Act shall not apply.

(h) Where a local authority have, in virtue of powers conferred on them by orders made by the Food Controller and Secretary for Scotland under the Defence of the Realm Regulations, bought and sold milk and made arrangements as to the distribution thereof in their district, such local authority may, if the Board are satisfied that in the special circumstances the continued exercise of such powers is desirable, buy milk from any person and sell milk so bought at a price estimated to cover at least the cost of purchasing and distributing such milk and make arrangements as to the distribution of milk in their district so, however, that nothing in this paragraph shall authorise the local authority to fix prices for milk in their district. The powers conferred hereby shall be subject to such conditions as may from time to time be prescribed by the Board and shall cease to be exerciseable if and when the Board so determine by order. Any expenses incurred by a local authority in the execution of the powers conferred on them by this paragraph shall be defrayed out of the public health general assessment, but such expenses shall not be reckoned in any calculation as to the statutory limit of that assessment. For the purposes of this para-

graph, the expression " milk " shall include skimmed milk, separated milk and buttermilk and any milk which has been submitted to sterilisation, pasteurisation, homogenisation, or any other like process, but shall not include condensed milk.

15. *Short Title and Extent.*—(1) This Act may be cited as the Milk and Dairies (Amendment) Act, 1922.

(2) This Act shall not apply to Ireland.

(3) This Act, except where otherwise expressly provided, shall come into operation on the first day of September, nineteen hundred and twenty-two.

APPENDIX.

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES.

[22nd December, 1887.]

To the OWNERS and OCCUPIERS for the time being of MANUFACTORIES of MARGARINE in ENGLAND and WALES to which the Margarine Act, 1887, applies ;—

To the several Local Authorities under the said Act for the time being in England and Wales :—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (which will come into operation on the 1st day of January, 1888), provision is made for the registration with the local authority of every manufactory of margarine (as defined by the said Act) in England and Wales from time to time in such manner as We, the Local Government Board, may direct :

And whereas by section 13 of the said Act the expression " local authority " is defined as meaning " any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875," and the local authorities authorised to appoint a public analyst under the last-named Act are as follows, namely :—In the city of London and the liberties thereof the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis ; the court of quarter sessions for every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament, or otherwise, a separate police establishment :

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows :—

ARTICLE 1.—Every owner or occupier of a manufactory of margarine in England and Wales who shall make application to the proper local authority for a certificate of registration under the said Margarine Act, 1887, shall, in his application, state the following particulars :—

(a) The name and address of the owner or occupier making the application.
(b) The situation of the manufactory.
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers carrying on the manufacture.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the manufactory to be registered by entering in a book the particulars of the application for registration ; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, written notice thereof shall be given by the owner or occupier of the manufactory to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

ARTICLE 4.—This Order shall come into operation on the First day of January, one thousand eight hundred and eighty-eight and shall remain in force until We shall otherwise direct.

SCHEDULE.

FORM (A).

Certificate under the Margarine Act, 1887.

(50 & 51 Vict. c. 29.)

This is to certify that the manufactory known as the
situate at at which the manufacture of margarine is at

present carried on by the owner [*or* occupier] thereof, has been duly registered by [*here insert the name of the local authority within whose District the manufactory is situate*] in accordance with the provisions of the Margarine Act, 1887, in that behalf, on the application of .

Dated this day of , in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

FORM (B).

Endorsement on Certificate in case of Change in Persons carrying on the Manufacture.

This is to certify that has been duly registered as the owner [*or* occupier] carrying on the manufacture of margarine in the within-named manufactory in the place of .

Dated this day of , in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

Given under the Seal of office of the Local Government Board, this Twenty-second day of December, in the year One thousand eight hundred and eighty-seven.

(L.S.)

CHAS. T. RITCHIE,
President.

HUGH OWEN,
Secretary.

[See also the next Order, and Circular Letter of the Local Government Board dated 27th February, 1900, *post*, p. 261.]

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES, ETC.

[26th February, 1900.]

To the OWNERS and OCCUPIERS for the time being of MANUFACTORIES of, and to the WHOLESALE DEALERS in, MARGARINE or MARGARINE-CHEESE in ENGLAND and WALES;—

To the several Local Authorities under the Margarine Act, 1887, and the Sale of Food and Drugs Act, 1899, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), provision was made for the registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by an Order dated the 22nd day of December, 1887 (hereinafter referred to as "the Order of 1887"), We directed the manner of registration under the Act of 1887 of every such manufactory of margarine;

And whereas by section 5 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act of 1899"), it is enacted that the provisions of the Act of 1887, as amended by the Act of 1899, shall extend to margarine-cheese as defined by that Act, and shall apply accordingly with the substitution of "margarine-cheese" for "margarine."

And whereas by sub-section (4) of section 7 of the Act of 1899 it is enacted that the provisions of section 9 of the Act of 1887 relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:

ARTICLE 1.—This Order shall come into operation forthwith, and shall remain in force until We shall otherwise direct; and the Order of 1887 is hereby rescinded:

Provided that in every case where a manufactory of mar-

garine, or an owner or occupier carrying on the manufacture of margarine has been duly registered, and such registration has effect at the date of this Order, such registration shall, notwithstanding the rescission of the Order of 1887 but subject to the provisions of Article 4 of this Order, continue to have effect: Provided also, that any book which prior to the date of this Order has been used by a local authority in pursuance of the Order of 1887 for the purposes of registration shall, so far as such book contains any entry applicable to any such case as aforesaid, be deemed to be part of the register of the local authority for the purposes of this Order.

ARTICLE 2.—Every owner or occupier of a manufactory of and every wholesale dealer in margarine or margarine-cheese in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 and the Act of 1899, or under either of the said Acts, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier or wholesale dealer making the application.
(b) The situation of the manufactory, or of the premises wherein the business of the wholesale dealer is carried on.
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 3.—If the application is in due form, the local authority shall cause the manufactory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 4.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the manufactory, or by the wholesale dealer carrying on the business,

to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887.
(50 & 51 Vict. c. 29),
[*or*] [*and*]
[*the Sale of Food and Drugs Act*, 1899
(62 & 63 Vict. c. 51)].

This is to certify that the [manufactory *or* premises, *or both, as the circumstances require*] known as , situate at , at which the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [margarine *or* margarine-cheese, *or both, as the circumstances require*] is [*or* are] at present carried on by [*name of the owner or occupier*] the [owner *or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in accordance with the provisions of the [Margarine Act, 1887, *or* Sale of Food and Drugs Act, 1899, *or both, as the circumstances require*] in that behalf, on the application of [*name of applicant.*]

Dated this day of , in the year One thousand nine hundred.

Signed
Clerk to the [*here insert name of local authority*].

FORM B.

Endorsement on Certificate in case of change in persons carrying on the manufacture or business.

This is to certify that has been duly registered as the [owner *or* occupier] carrying on the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances*

require] [margarine *or* margarine-cheese, *or both, as the circumstances require*] in the within-named [manufactory *or* premises, *or both, as the circumstances require*] in the place of

Dated this day of , in the year One thousand nine hundred.

Signed

Clerk to the [*here insert name of local authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-sixth day of February, in the year One Thousand nine hundred.

(L.S.)

HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 27th, 1900, *post*, p. 261.]

ORDER AS TO REGISTRATION OF BUTTER FACTORIES, ETC.

[28th December, 1907.]

To the OWNERS and OCCUPIERS for the time being of BUTTER FACTORIES, and of premises on which there is manufactured MILK-BLENDED BUTTER, and to the WHOLESALE DEALERS in MILK-BLENDED BUTTER in ENGLAND and WALES :—

To the several Local Authorities under the Margarine Act, 1887, the Sale of Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907, for the time being in England and Wales ;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), as extended by section 7 of the Sale of Food and Drugs Act, 1899 (herein-

after referred to as " the Act of 1899 "), provision was made for the registration of every manufactory of margarine and of all premises wherein the manufacture of margarine or the business of a wholesale dealer in margarine is carried on in England and Wales with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by section 1 of the Butter and Margarine Act, 1907 (hereinafter referred to as " the Act of 1907 "), it is enacted that the provision aforesaid shall apply to butter factories and to any premises on which milk-blended butter is manufactured or on which the business of a wholesale dealer in milk-blended butter is carried on:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:—

ARTICLE 1.—Every owner or occupier of a butter factory or of premises on which there is manufactured any milk-blended butter, or on which there is carried on the business of a wholesale dealer in milk-blended butter in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 as amended by the Act of 1899 and the Act of 1907, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier making the application;

(b) The situation of the factory, or of the premises on which the manufacture, or the business of the wholesale dealer, is carried on;

(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business;

(d) Whether the premises are proposed to be registered as

(i) a butter factory; or

(ii) premises on which there is manufactured any milk-blended butter; or

(iii) premises on which there is carried on the business of a wholesale dealer in milk-blended butter.

The application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the factory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the butter factory, or of the premises on which the manufacture of milk-blended butter or the business of a wholesale dealer in milk-blended butter, as the case may be, is carried on, to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887
(50 & 51 Vict. c. 29),
as amended by
The Sale of Food and Drugs Act, 1899
(62 & 63 Vict. c. 51),
and
The Butter and Margarine Act, 1907
(7 Edw. 7, c. 21).

This is to certify that the [factory *or* premises, *or both, as the circumstances require*] known as situate at at or on which the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [butter *or* milk-blended butter, *or both, as the circumstances require*], is [*or* are] at present carried on by [*name of the owner or occupier*] the [owner *or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in

accordance with the provisions of the Margarine Act, 1887, and the Butter and Margarine Act, 1907, in that behalf, on the application of [*name of applicant*].

Dated this day of , in the year One thousand nine hundred and .

Signed

Clerk to the [*here insert name of local authority*].

FORM B.

Endorsement on certificate in case of change in persons carrying on the manufacture or business .

This is to certify that has been duly registered as the [owner *or* occupier] carrying on the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [butter *or* milk-blended butter, *or both, as the circumstances require*] at or on the within-named [factory *or* premises, *or both, as the circumstances require*] in the place of .

Dated this day of , in the year One thousand nine hundred and .

Signed

Clerk to the [*here insert name of local authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-eighth day of December, in the year One thousand nine hundred and seven.

(L.S.)

JOHN BURNS,
President.

S. B. PROVIS,
Secretary.

REGULATION AS TO COMPETENCY OF ANALYST.

[7th March, 1900.]

To the several Local Authorities for the time being required by law to appoint a Public Analyst :
And to all others whom it may concern.

Whereas by the Sale of Food and Drugs Acts provision is made for the appointment by certain local authorities of persons to act as analysts of all articles of food and drugs, and every such appointment is made subject to the approval of the Local Government Board ;

And whereas by sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as " the Act "), it is enacted as follows :

" (1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst . . ."

" (5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board."

And whereas by section 25 of the Act it is enacted as follows :

" In this Act unless the context otherwise requires—

. . . . .

" The expression ' local authority ' means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression ' public analyst ' means an analyst so appointed."

Now, therefore, We, the Local Government Board, in pursuance of the powers given to Us by sub-section (5) of section 3 of the Act, do hereby order that the following regulation shall have effect ; that is to say,—

Every person appointed on or after the first day of January, one thousand nine hundred, to the office of public analyst shall furnish such proof (*a*) as We may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy.

Such proof shall in every case comprise documentary

evidence (a) that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by Us as competent to confer such qualification or to test such skill or knowledge. Such proof shall also comprise such further evidence as We may in any particular case require.

All such documentary evidence as is hereinbefore mentioned shall be furnished by such person to the local authority by whom he is appointed and shall be transmitted to Us by the local authority when applying for Our approval of the appointment :

Provided that nothing in this Regulation contained shall, in the case of any person who was appointed to the office of public analyst with our approval between the first day of January, one thousand eight hundred and ninety-one, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office.

Given under the Seal of Office of the Local Government Board, this seventh day of March, in the year One thousand nine hundred.

(L.S.)

HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

(*a*) **Proof of Skill—Documentary Evidence.**—For further information as to these, see Circular Letter from the Local Government Board, dated March 8th, 1900, *post*, p. 262.

SALE OF MILK REGULATIONS, 1901 (*a*).

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less

than 3 per cent. of milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1889, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

[3. *Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water* (*c*).]

EXTENT.

4. These Regulations shall extend to Great Britain.

COMMENCEMENT.

5. These Regulations shall come into operation on the first day of September, one thousand nine hundred and one.

SHORT TITLE.

6. These Regulations may be cited as the Sale of Milk Regulations, 1901.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this fifth day of August, One thousand nine hundred and one.

(L.S.)

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Board of Agriculture, dated December 28th, 1901, *post*, p. 264.]

(*a*) For an explanation of, and remarks upon, these Regulations, see Circular Letter from the Board of Agriculture, dated December 28th, 1901, *post*, p. 264.

(*b*) **Presumptions.**—These are of course capable of being rebutted. Milk below the standard is not necessarily adulterated, and milk above the standard is not necessarily genuine. See p. 24, *ante*, and remarks in Circular Letters dated December 28th, 1901, and February 14th, 1911, *post*, pp. 264, 284; and *Lamont* v. *Rodger*, [1911] Sess. Cas. (J.) 24.

(*c*) This regulation is repealed by the Regulations of 1912, *infra*.

SALE OF MILK REGULATIONS, 1912.

The Board of Agriculture and Fisheries, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

SKIMMED OR SEPARATED MILK.

1. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 8·7 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, until the contrary is proved, that the milk is not genuine, by reason of either the addition thereto of water, or the abstraction therefrom of milk-solids other than milk-fat (*a*).

REVOCATION OF EXISTING REGULATION.

2. Regulation 3 of the Sale of Milk Regulations, 1901, is hereby revoked, but not so as to affect the validity of any certificate of analysis given before the commencement of these Regulations or any legal proceedings in respect of any sample to which any such certificate relates.

COMMENCEMENT.

3. These Regulations shall come into operation on the First day of September, One thousand nine hundred and twelve.

EXTENT.

4. These Regulations shall extend to England and Wales.

SHORT TITLE.

5. These Regulations may be cited as the Sale of Milk Regulations, 1912.

In witness whereof the Board of Agriculture and Fisheries have hereunto set their Official Seal this twenty-ninth day of June, One thousand nine hundred and twelve.

T. H. ELLIOTT,
Secretary.

(*a*) This regulation is not *ultra vires* (*Gordon* v. *Love*, [1911] Sess. Cas. (J.) 75; 48 Sc. L. R. 590).

SALE OF MILK (IRELAND) REGULATIONS.

In Ireland Regulations similar to those set out above have been made by the Department of Agriculture and Technical Instruction for Ireland.

SALE OF BUTTER REGULATIONS, 1902.

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

1. Where the proportion of water in a sample of butter exceeds 16 per cent. it shall be presumed (*a*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

2. These Regulations extend to Great Britain.

3. These Regulations shall come into operation on the Fifteenth day of May, One thousand nine hundred and two.

4. These Regulations may be cited as the Sale of Butter Regulations, 1902.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this twenty-second day of April One thousand nine hundred and two.

(L.S.)

T. H. ELLIOTT,
Secretary.

(*a*) **Presumption.**—See note (*b*) on p. 216, *ante.*

SALE OF BUTTER (IRELAND) REGULATIONS.

In Ireland Regulations similar to those set out above have been made by the Department of Agriculture and Technical Instruction for Ireland.

Specimen Form.] FORM OF ANALYST'S QUARTERLY REPORT.

THE SALE OF FOOD AND DRUGS ACT, 1875.

Report of the Public Analyst appointed for the of , upon the articles analysed by him under the above Act, during the quarter ending the .

Article submitted for analysis.	State whetner the sample was submitted to the analyst by an officer acting under direction of a Local Authority, under section 13 of Act, and if so, the name of such authority.	Result of analysis; showing whether the sample was genuine or adulterated: and if adulterated, what were the nature and extent of the adulteration.	The sum paid in respect of the analysis.	Observations.

Total number of samples analysed during the quarter . . . . . .

Number adulterated . . . . . .

(Signed)

Public Analyst.

(Date)

PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912.

[1st August, 1912.]

(NOTE.—These Regulations are made and enforced under the Public Health Acts and not under the Sale of Food and Drugs Acts. The provisions of the last-mentioned Acts do not apply to them, except to the very limited extent mentioned in Regulation 7. In particular, it should be noted (1) that the penalty is under the Public Health Act, 1896 (see the "Notice" at the end of the Regulations), (2) that the certificate is not evidence, and the analyst must be called as a witness, and (3) that the defendant cannot insist upon the third part of the sample being sent to the Government Laboratory.)

To the several LOCAL AUTHORITIES in ENGLAND and WALES for the time being authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907 ;—
To Officers of Customs and Excise ;—
To the Principal Chemist of the Government Laboratories ;—
To Medical Officers of Health ;—
To Public Analysts ;—
To Dairymen, and to Wholesale and Retail Dealers in Milk and Cream ;—
And to all others whom it may concern.

WHEREAS by section 1 of the Public Health (Regulations as to Food) Act, 1907, it is enacted as follows :—

"(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

"(a) provide for the examination and taking of samples of any such articles;

"(b) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations;

"(c) provide for the recovery of any charges authorised to be made by the regulations for the purposes of the regulations or any services performed thereunder;

"(2) For the purposes of regulations made under this Act articles commonly used for the food or drink of man shall be deemed to be intended for sale for human consumption unless the contrary is proved."

* * * * *

And whereas We, the Local Government Board, are empowered by Regulations made under the Public Health Act, 1896, and the enactments mentioned in that Act, to provide for the Regulations being enforced and executed by the officers of Customs and Excise as well as by other authorities and officers, and sub-section (2) (a) of section 1 of the Public Health Act, 1896, requires that the Regulations shall be subject to the consent, so far as they apply to the officers of Customs and Excise, of the Commissioners of Customs and Excise;

And whereas in the exercise of Our powers under the Public Health (Regulations as to Food) Act, 1907, We, by the Public Health (First Series: Unsound Food) Regulations 1908, made Regulations in relation to articles of food;

And whereas, for the prevention of danger arising to public health, it is expedient that such Regulations as are hereinafter set forth be made in relation to Milk and Cream;

And whereas the Commissioners of Customs and Excise have signified their consent to the said Regulations, so far as they apply to the officers of Customs and Excise:

NOW, THEREFORE, We, the Local Government Board, by this Our Order, and in the exercise of the powers conferred upon Us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of

every other power enabling Us in that behalf, do make the following regulations, that is to say :—

PART I.

I. *Interpretation.*—In these Regulations, unless the contrary intention appears :—

(a) The expression " preservative substance " means any substance, preparation, or solution which when added to milk or cream is capable of retarding the onset of sourness or decomposition, or is capable of neutralising acidity (sourness) in milk or cream, and the expression " thickening substance " means sucrate of lime, gelatine, starch paste, or any other substance which, when added to cream, is capable of increasing its thickness :

Provided that neither cane nor beet sugar shall be regarded as a preservative or as a thickening substance ;

(b) The expression " milk " includes separated, skimmed, condensed and dried milk ;

(c) The expression " cream " means that portion of milk rich in milk-fat which has risen to the surface of milk on standing and has then been removed, or which has been separated from milk by centrifugal force ;

(d) The expression " preserved cream " means cream containing 35 per cent. or more by weight of milk-fat, to which has been added—

(i) boric acid, borax or a mixture of those preservative substances, or

(ii) hydrogen peroxide ;

(e) The expression " seller " includes any person who exposes or offers for sale, or has in his possession for the purpose of sale ;

(f) The expression " foreign " used in relation to milk, cream, or preserved cream means brought from a place situate elsewhere than in the United Kingdom, the Channel Islands, or the Isle of Man ;

(g) The expression " local authority " means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875

to 1907, and the expression "public analyst" means an analyst so appointed;

(h) The expression "Unsound Food Regulations" means the Public Health (First Series: Unsound Food) Regulations, 1908;

(i) Other expressions have the same meaning, *mutatis mutandis*, as in the Unsound Food Regulations.

II. *Commencement of Regulations.*—Subject as provided in sub-division (1) of Article V. hereof these Regulations shall come into operation on the First day of October, One thousand nine hundred and twelve.

PART II.

III. *Prohibition of Preservatives in Milk.*—(1) No person shall add, or order or permit any other person to add, any preservative substance to milk intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any milk to which any preservative substance has been added in contravention of the provisions of sub-division (1) of this Article.

IV. *Restriction on the Use of Preservatives in Cream.*—(1) No person shall add, or order or permit any other person to add—

(a) any thickening substance to cream or preserved cream;

(b) any preservative substance to cream containing less than 35 per cent. by weight of milk-fat;

(c) to cream containing 35 per cent. or more by weight of milk-fat any preservative substance other than—

(i) boric acid, borax or a mixture of those preservative substances (*a*); or

(ii) hydrogen peroxide;

in any case in which the cream is intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any cream to which any thickening substance or any preservative substance has been added in contravention of the provisions of sub-division (1) of this Article.

(*a*) Add the words :—" In amount not exceeding 0·4 per cent. boric acid (H_3BO_3) by weight of the preserved cream." See the Amending Order of 1917, *post*, p. 229.

V. *Declaration of Preservatives in Cream.*—(1) Every seller of preserved cream shall, in every advertisement, price list, or trade list which is used in connection with the sale of preserved cream for human consumption, describe that article as preserved cream, and in no such document shall any words be contained which might imply that the preserved cream is cream to which a preservative substance has not been added.

The provision in this sub-division of this Article shall come into operation on the First day of January, One thousand nine hundred and thirteen.

(2) No seller of preserved cream shall deposit for sale in any place, or dispatch or deliver to any purchaser, or to any other person, any receptacle containing preserved cream intended for human consumption unless the receptacle is labelled in the manner prescribed in the Schedule to these Regulations, and unless, in the case of preserved cream containing boric acid, borax or a mixture of those preservative substances, the amount of those substances calculated as boric acid (H_3BO_3) is accurately stated as not exceeding the limit specified on the label in the manner prescribed in the said Schedule :

Provided that if in any public refreshment room, restaurant, shop, or other public premises preserved cream is delivered to a purchaser or other person for consumption on the premises, the receptacle containing the preserved cream shall not be required to be labelled in accordance with the foregoing provisions if there is placed in a conspicuous position in every room on the premises in which customers are served with refreshments a notice, printed in large and easily legible type, indicating that the cream supplied for consumption on the premises is preserved cream, or if a statement to that effect is conspicuously made on every bill of fare exhibited to customers, or if by some other adequate means similar intimation is publicly given.

VI. *Powers and Duties of Local Authority.*—The local authority shall enforce and execute the Regulations in this

Part of this Order, and for this purpose shall authorise the making of inquiries and the taking of any other steps which may seem to them to be necessary for securing the due observance of the Regulations in their district:

Provided that before the local authority institute proceedings against any person for a contravention of any of the Regulations in this Part of this Order the local authority shall afford him an opportunity of furnishing an explanation (*a*) in writing or otherwise as they may appoint, and shall duly consider any such explanation and all the circumstances of the case.

(*a*) In *Edward's Creameries Ltd.* v. *Smith*, (1922) 86 J. P. 155; 127 L. T. 549, it was held that if preserved cream is sold in a can not properly labelled, it is a sufficient "opportunity," etc., if the attention of the servant in charge of the cans is called to the omission.

VII. *Samples.*—Any of the officers named in Section 13 of the Sale of Food and Drugs Act, 1875, may under the direction of the local authority appointing him procure for examination, in accordance with the provisions of Section 14 of that Act (as amended by subsequent legislation), so far as the same may be applicable, samples of milk or cream or preserved cream, or of any article resembling milk or cream, or of any substance which appears to be intended for addition to milk or cream; and the owner or occupier of any premises on which there is deposited milk or cream or preserved cream intended for sale, or for preparation for sale, for human consumption, or the person having the custody thereof, shall afford to the officer or to any officer of the Local Government Board all reasonable facilities for entering the said premises for the purpose of taking samples or making inquiries or for any other purpose of the Regulations in this Part of this Order.

PART III.

VIII. *Restrictions on Importation.*—No person shall import into England and Wales:—

(a) any foreign milk to which any preservative substance has been added;

(b) any foreign cream to which any thickening substance has been added;

(c) any foreign cream containing less than 35 per cent. by weight of milk-fat to which any preservative substance has been added ;

(d) any foreign cream containing 35 per cent. or more by weight of milk-fat to which has been added any preservative substance other than—

(i) boric acid, borax or a mixture of those preservative substances ; or

(ii) hydrogen peroxide ;

(e) any foreign preserved cream which is not contained in a vessel or receptacle duly labelled in the manner prescribed in the Schedule to these Regulations.

IX. *Powers and Duties of Officers of Customs and Excise.*—(1) The officers of Customs and Excise shall enforce and execute the regulations in this Part of this Order and for this purpose shall, in accordance with directions given by the Treasury after consultation with Us, take samples of consignments of imported milk or cream or articles resembling milk or cream.

(2) When any officer of Customs and Excise takes a sample in pursuance of sub-division (1) of this Article he shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government Laboratories and retain one part for future comparison.

(3) In any proceeding under this Part of this Order the certificate of the principal chemist of the Government Laboratories of the result of the analysis shall be sufficient evidence of the facts therein stated unless the defendant require that the person who made the analysis be called as a witness, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) If in any case the officer of Customs and Excise is of opinion that an offence has been committed under this Part of this Order he shall communicate to Us for Our information

the name of the importer and such other information as he possesses or may obtain as to the destination of the consignment.

PART IV.

X. *Determination of Differences.*—(1) If a difference arises in relation to any subject matter of, or to anything done under, these Regulations, the difference may, on the application of all the parties affected, be referred to Us for determination.

(2) It shall be at Our option to determine any such difference as arbitrators or otherwise; and if We elect to determine the difference as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions shall apply, as if they were re-enacted in these Regulations, and in terms made applicable to Us, and to the determination of the difference.

(3) Where We elect to determine any such difference otherwise than as arbitrators, We may by Our Order determine the difference, and Our determination shall be final and conclusive.

(4) Every Order made by Us in pursuance of this Article shall have effect as if the Order were enacted in these Regulations.

XI. *Powers to be Cumulative.*—All powers given by these Regulations shall be deemed to be in addition to, and not in derogation of any other powers conferred by Regulations under the Public Health (Regulations as to Food) Act, 1907; and those other powers may be exercised in the same manner as if these Regulations had not been made.

XII. *Short Title.*—These Regulations may be cited as "The Public Health (Milk and Cream) Regulations, 1912."

SCHEDULE.

REGULATIONS WITH RESPECT TO THE LABELLING OF PRESERVED CREAM.

1. *Every receptacle containing preserved cream shall be labelled by the attachment thereto of an adhesive label, in this Schedule referred to as the "declaratory label"* (*a*).

(*a*) Repealed and amended by the Amending Order of 1917, *post*, p. 229.

2. *Every declaratory label shall be in the form and contain the information indicated in Label I. or Label II. set out in this Schedule, as the case may require. Such information shall be printed in black type, of not less size than that shown in the said Label I. or Label II., upon a white ground in the centre of the declaratory label, and nothing else shall be printed on the declaratory label; except that in every case in which Label I. is used the maximum amount per cent. of boric acid* (H_3BO_3) *contained in the preserved cream shall be stated in figures on the declaratory label* (*a*).

(*a*) Repealed and amended by the Amending Order of 1917, *post*, p. 229.

3. The size of the declaratory label shall be determined as follows :—

Capacity of Receptacle.	Size of Label.
	Inches Inches.
Not exceeding 1 pint	$\frac{3}{4}$ by $1\frac{3}{4}$
Exceeding 1 pint	3 by 5

4. The declaratory label shall be so attached to the receptacle that the whole of the label shall be visible and clearly legible, and the declaratory label shall not be overlapped by any other label or otherwise obscured.

5. *The declaratory label shall not be affixed either over the mouth of the receptacle or beneath the receptacle* (*a*).

(*a*) Repealed and amended by the Amending Order of 1917, *post*, p. 229.

6. Where on any receptacle containing preserved cream or on any wrapper or package in which such receptacle is enclosed, there appears any reference by label (other than the declaratory label) or otherwise to preserved cream contained therein, the preserved cream shall in every case be described as " preserved cream," the words " preserved " and " cream " being set out in letters of the same size.

7. No receptacle containing preserved cream shall bear or shall have attached on any label a trade description within the meaning of the Merchandise Marks Act, 1887,

which shall be false or in any way likely to mislead a purchaser as to the presence or utility of the preservative substance or as to the declaratory label or as to the Regulations.

Given under the Seal of Office of the Local Government Board, this First day of August, in the year One thousand nine hundred and twelve.

(L.S.)

JOHN BURNS, *President.*

H. C. MONRO, *Secretary.*

NOTICE.—The Public Health Act, 1896, provides by sub-section (3) of Section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and, in the case of a continuing offence, to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the London Gazette, 2nd August, 1912.

[See also Circular Letters from the Local Government Board dated July 11th, 1906, and October 27th, 1913, *post*, pp. 275, 291.]

MILK AND CREAM REGULATIONS: AMENDING ORDER.

[8th February, 1917.]

To the several LOCAL AUTHORITIES in ENGLAND and WALES for the time being authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907;—

To Officers of Customs and Excise;—

To the Principal Chemist of the Government Laboratories;—

To Medical Officers of Health;—

To Public Analysts;—

To Dairymen, and to Wholesale and Retail Dealers in Milk and Cream;—

And to all others whom it may concern.

WHEREAS, for the prevention of danger arising to public health, We, the Local Government Board, by the Public

Health (Milk and Cream) Regulations, 1912 (hereinafter referred to as "the Regulations"), made certain Regulations in relation to Milk and Cream;

* * * * *

And whereas it is expedient that the Regulations should be amended as hereinafter set forth;

And whereas the Commissioners of Customs and Excise have signified their consent to the amendments of the Regulations so far as they apply to the officers of Customs and Excise:

NOW THEREFORE, We, by this Our Order, and in the exercise of the powers conferred upon Us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of every other power enabling Us in that behalf, do hereby Order that on and after Monday the Second day of April, 1917, the Regulations shall be read and have effect as if—

(a) the words "in amount not exceeding 0·4 per cent. boric acid (H_3BO_3) by weight of the preserved cream" were inserted in Article IV. and also in Article VIII. of the Regulations after the words "boric acid, borax or a mixture of those preservative substances";

(b) for the paragraphs numbered respectively 1, 2, and 5 in the Schedule to the Regulations there were substituted the following paragraphs, that is to say:—

"1. Every receptacle containing preserved cream shall be labelled by affixing thereto an adhesive label in the form prescribed, in this Schedule referred to as the 'declaratory label.' Provided that, where the receptacle is made of cardboard, the declaratory label may be printed on the outside of the cardboard itself.

"2. Every declaratory label shall be in the form and contain the information indicated in Label I. or Label II. set out in this Schedule, as the case may require. Such information shall be printed in dark coloured type, of not less size than that shown in the said Label I. or Label II., upon a white or cream coloured ground in the centre of the declaratory label, and nothing else shall be printed on the

declaratory label; except that in every case in which Label I. is used the maximum amount per cent. of boric acid (H_3BO_3) contained in the preserved cream shall be stated in figures on the declaratory label.

"LABEL I.

PRESERVED CREAM
containing BORIC ACID
not exceeding PER CENT.
NOT SUITABLE FOR INFANTS OR INVALIDS.

LABEL II.

PRESERVED CREAM (PEROXIDE)
NOT SUITABLE FOR INFANTS OR INVALIDS.

"5. The declaratory label shall not be affixed or printed either over the mouth of the receptacle or beneath the receptacle."

This Order may be cited as "The Public Health (Milk and Cream) Regulations, 1912, Amendment Order, 1917."

Given under the Seal of Office of the Local Government Board, this Eighth day of February, in the year One thousand nine hundred and seventeen.

(L.S.)

RHONDDA,
President.

H. C. MONRO,
Secretary.

Date of publication in the London Gazette, 9th February, 1917.

THE SALE OF FOOD ORDER, 1921, No. 1305, DATED AUGUST 16TH, 1921, MADE BY THE BOARD OF TRADE UNDER THE MINISTRY OF FOOD (CONTINUANCE) ACT, 1920 (10 & 11 GEO. 5, C. 47), AND THE MINISTRY OF FOOD (CESSATION) ORDER, 1921.

[NOTE.—The portions of this Order which are set out here were revoked by the Food Control Order, 1921, No. 1883, dated December 14th, 1921.]

In exercise of the powers conferred upon them by the Ministry of Food (Continuance) Act, 1920, and the Ministry of Food (Cessation) Order, 1921, and of all other powers

enabling them in that behalf the Board of Trade hereby order as follows :—

* * * * *

PART IV.—JAM.

9. A person shall not sell or offer or expose for sale any jam unless the same complies with the following provisions :—

(a) The water soluble extract of jam shall not be less than 65 per cent. of the jam.

(b) Not more than 10 per cent. of the jam measured by weight shall consist of added fruit juice.

(c) Where more than one variety of fruit or vegetable is used in the making of a jam (other than in the form of added fruit juice not exceeding the quantity specified in sub-clause (b)) each such variety must be mentioned in the description, but so that where any fruit or fruits contained in such jam is less than 25 per cent. of the total fruit content, the name of such fruit or fruits shall be prefaced in the description by the words " Flavoured with " in such form as to be easily readable by the buyer.

(d) The provisions of sub-clause (c) shall not apply to jam sold under the description of " Mixed Jam " or " Mixed Fruit Jam."

(e) Notwithstanding the provisions of sub-clause (c), jam made from rhubarb and preserved ginger may be sold under the description " Rhubarb and Preserved Ginger " provided that the quantity of preserved ginger contained in such jam is not less than 20 per cent. of the total fruit content.

10. Without prejudice to the provisions of Clause 9, a person shall not sell or offer or expose for sale any article under the description of marmalade or under any description of which the word " marmalade " forms part, unless—

(a) only citrous fruits, citrous fruit juices and sugar or other sweetening substances have been used in the making thereof, or

(b) each variety of fruit or vegetable used in the making thereof is mentioned in the description.

* * * * *

12. Every person selling jam shall produce all books of account, records and invoices to any person authorised by the local authority to inspect the same, so far as necessary for the purpose of showing whether or not he is complying with the provisions of this Part of this Order as respects content, weight, description and labelling.

13. For the purposes of this Part of this Order the expression " Jam " shall include jelly, conserve and marmalade.

PART V.—Fats.

14. A person shall not sell or offer or expose for sale as dripping any substance unless such substance shall have been manufactured by a process other than the acid process from raw-beef fat or raw-mutton fat or beef or mutton bones, and does not contain more than two per cent. of free fatty acids or more than one per cent. in all of water and substances other than fat.

15. A person shall not sell or offer or expose for sale any substance (except lard, neutral lard, oleo oil, beef and mutton stearine and Premier Jus) manufactured from raw-beef fat or raw-mutton fat or beef or mutton bones or from any other animal fat, which does not comply with the requirements of the preceding clause, otherwise than under the name and by the description of " Technical Tallow."

16. A person shall not sell or offer or expose for sale as an edible fat any mixture or compound (other than butter, margarine or dripping) manufactured wholly or partly from oils or fats, which contains more than 0·5 per cent. of free fatty acids or more than 0·5 per cent. in all of water and substances other than oil or fat.

17. A person shall not manufacture or sell or offer or expose for sale any margarine which does not contain at least 80 per cent. of oil and fat.

PART VI.—General.

18. (a) Every Local Authority is hereby authorised to execute and enforce the provisions of this Order within their area, and except in Scotland to institute proceedings for any offences against this Order.

* * * * *

(c) For the purposes of Parts III., IV. and V. of this Order the local authority shall be any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907.

19. A person authorised in that behalf by a local authority to procure for analysis samples of any article to which Part IV. or Part V. of this Order applies shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts, 1875 to 1899, and a person selling or exposing for sale any such article shall, on tender of the price for the quantity which he shall reasonably require for the purpose of analysis, sell the same to such authorised person accordingly.

20. In any proceedings in respect of an infringement of this Order the production of the certificate of the principal chemist of the Government laboratories, or of an analyst appointed under the Sale of Food and Drugs Acts, 1875 to 1907, shall be sufficient evidence of the facts therein stated unless the defendant shall require that the person who made the analysis shall be called as a witness. The certificate shall, so far as circumstances permit, be in the form required by the Sale of Food and Drugs Act, 1875.

21. (i.) If in any proceedings for an infringement of any of the provisions of this Order (other than the provisions of Part I. or Part III.) the defendant proves :—

(a) * * * * *

(2) in the case of proceedings under Part IV., that he sold or offered or exposed for sale the article in the container in which he bought it;

(3) in the case of proceedings under Part V., that he bought the article with a written warranty as to such of the matters referred to in Part V., in respect of which it is proved that an offence has been committed,

(b) in any case that he had no reason to believe that the article did not, as respects content, weight, description or labelling (as the case may be) comply with the provisions of this Order;

(c) that he has given due notice to the prosecutor that he intends to rely upon the provisions of this clause;

such person shall be entitled to be discharged from the prosecution.

(ii.) The provisions of sub-sections (3) and (4) of section 20 of the Sale of Food and Drugs Act, 1899, shall apply as nearly as may be to proceedings under this clause in the same way as they apply to proceedings under the Sale of Food and Drugs Acts.

22. For the purposes of this Order percentages shall be calculated by weight.

23. Infringements of this Order are summary offences under the Ministry of Food (Continuance) Act, 1920.

24. The Orders mentioned in the Schedule to this Order are hereby revoked, but without prejudice to any proceedings in respect of any contravention thereof.

25. (a) This Order may be cited as the Sale of Food Order, 1921, and shall come into force on the 1st September, 1921.

(b) This Order shall not apply to Ireland.

(c) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

By Order of the Board of Trade,

FRANK H. COLLER,
Secretary to the Food Department.

16th August, 1921.

THE SCHEDULE.

S.R. & O., 1918, No. 547 .	The Bread Order, 1918.
S.R. & O., 1917, No. 318 .	The Tea (Nett Weight) Order, 1917.
S.R. & O., 1921, No. 403 .	The Bacon, Ham and Lard (Sales) Order, 1921.
S.R. & O., 1919, No. 1733 & 1920, No. 858.	The Imported Meat (Labelling) Order (No. 2), 1919, as amended.
S.R. & O., 1920, No. 2408 .	The Eggs (Description on Sale) Order, 1920.
S.R. & O., 1920, No. 1512 & 1921, No. 215.	The Jam (Sales) Order, 1920, as amended.
S.R. & O., 1919, No. 511. .	The Dripping (Standard of Quality) Order, 1919.
S.R. & O., 1919, No. 658 .	The Edible Fats (Standard of Quality) Order, 1919.

THE LOCAL AUTHORITIES (FOOD) ORDER, 1921, DATED AUGUST 16TH, 1921, MADE BY THE MINISTER OF HEALTH.

[1921, No. 1345.]

WHEREAS in exercise of the powers conferred upon them by the Ministry of Food (Continuance) Act, 1920 (*a*), and the Ministry of Food (Cessation) Order, 1921, the Board of Trade have made the Sale of Food Order, 1921 (*b*), and an Order, dated the 24th day of June, 1921 (*c*), amending the Milk (England and Wales) Order, 1921, made by the Food Controller;

And whereas by the Orders of the Local Government Board or of the Minister of Health mentioned in the Schedule to this Order provision was made for the discharge by the Local Authorities for the purposes of those Orders, and by their Officers, of certain functions assigned to such local authorities by the Food Controller, and it is expedient that those Orders should be rescinded:

NOW THEREFORE, the Minister of Health, in pursuance of his powers in that behalf, and by arrangement with the Board of Trade, hereby Orders as follows:—

1. This Order may be cited as the Local Authorities (Food) Order, 1921, and shall come into operation on the 1st day of September, 1921.

2. Every Local Authority for the purposes of the Weights and Measures Acts, 1878 to 1919, and every Local Authority authorised to appoint an Analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, and such of their officers as they may respectively designate or appoint for those purposes, shall have all such powers and duties as may be necessary for the due discharge within their area of the functions assigned to such Local Authorities by the Sale of Food Order, 1921 (*b*), by the said Order dated the 24th day of June, 1921 (*c*), amending the Milk (England and Wales) Order, 1921, or by any Orders amending or varying those Orders or the Milk (England and Wales) Order, 1921.

3. Upon the commencement of this Order, the Orders mentioned in the Schedule to this Order shall be rescinded, and Section 3 of the War Emergency Laws (Continuance)

Act, 1920 (*d*), shall apply as if those Orders were Orders which had expired at the termination of the present War, and the rescission of those Orders were an expiry within the meaning of that Section.

4. Any expenses incurred by a Local Authority in the execution of Article 2 of this Order, shall be defrayed in the same manner as expenses of the Local Authority are defrayed for the purposes of the Weights and Measures Acts, 1878 to 1919, or of the Sale of Food and Drugs Acts, 1875 to 1907, as the case may be.

THE SCHEDULE.

The Local Authorities (Food Control) Order (No. 2), 1917 (*e*).
The Local Authorities (Food Control) Order (No. 3), 1917 (*f*).
The Local Authorities (Food Control) Order (No. 2), 1917, Amendment Order, 1918 (*g*).
The Local Authorities (Food Control) Order (No. 2), 1917, Amendment Order, 1919 (*h*).

Given under the Official Seal of the Minister of Health, this Sixteenth day of August, in the year One thousand nine hundred and twenty-one.

(L.S.) L. G. BROCK,
Assistant Secretary, Ministry of Health.

(*a*) 10 & 11 Geo. 5, c. 47.
(*b*) *Ante*, p. 231.
(*c*) Now superseded by s. 3 of the Act of 1922, *ante*, p. 192.
(*d*) 10 & 11 Geo. 5, c. 5.
(*e*) S. R. & O., 1917, No. 887.
(*f*) S. R. & O., 1917, No. 1176.
(*g*) S. R. & O., 1918, No. 1426.
(*h*) S. R. & O., 1919, No. 1265.

THE MILK AND DAIRIES (CONSOLIDATION) ACT, 1915.

[5 & 6 GEO. 5, c. 66.]

An Act to consolidate certain Enactments relating to Milk and Dairies. [29th July, 1915.]

[*This Act will not come into force before the* 1*st September*, 1925. *In the meantime its place is taken by the Act of* 1922, ante, p. 189.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Milk and Dairies Orders.*—(1) The Local Government Board may make such general or special orders (hereinafter referred to as Milk and Dairies Orders) as they think fit for all or any of the following purposes :—

(a) for the registration with local authorities of all persons carrying on the trade of dairymen ;
(b) for the registration with local authorities of all dairies ;
(c) for the inspection of cattle in dairies ;
(d) for the inspection by persons authorised by the local authority for the locality in which the dairy is situate of dairies and persons in or about dairies who have access to the milk or to the churns or other milk receptacles ;
(e) for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons following the trade of dairymen ;
(f) for securing the cleanliness of milk stores, milk shops, and milk vessels used for containing milk for sale by such persons ;
(g) for prescribing the precautions to be taken for protecting milk against infection or contamination ;
(h) for preventing danger to health from the sale for human consumption, or from the use in the manufacture of products for human consumption, of infected, contaminated, or dirty milk ;

(i) for regulating the cooling, conveyance, and distribution of milk intended for sale for human consumption, or for use in the manufacture of products for human consumption ;

(j) as to the labelling, marking, or identification and the sealing or closing of churns, vessels, and other receptacles of milk for sale for human consumption or used for the conveyance of such milk ;

(k) for prohibiting the addition of colouring matter ; and for prohibiting or regulating the addition of skimmed or separated milk or water or any other substance to milk intended for sale for human consumption, or the abstraction therefrom of butter-fat or any other constituent ; and for prohibiting or regulating the sale for human consumption of milk to which such an addition or from which such abstraction has been made or which has been otherwise artificially treated :

(l) for authorising the use in connexion with the sale of milk, of the designation "certified milk," for prescribing the conditions subject to which milk may be sold under such designation, and for prohibiting the use of such designation in connexion with the sale of milk in respect of which the prescribed conditions are not complied with ;

(m) for authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions (if any) as the Local Government Board prescribe.

(2) A Milk and Dairies Order with respect to the inspection of cattle in a dairy may authorise the person making the inspection to require any cow to be milked in his presence and to take samples of the milk, and to require that the milk from any particular teat should be kept separate and to take separate samples thereof.

(3) If any person is guilty of a contravention of, or non-compliance with, the provisions of any Milk and Dairies Order, he shall be guilty of an offence against this Act.

(4) Milk and Dairies Orders shall be made by the Local Government Board with the concurrence of the Board of Agriculture and Fisheries, and shall have effect as if enacted in this Act.

(5) All Milk and Dairies Orders shall be laid before each House of Parliament as soon as may be after they are made ; and if an Address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after the order is laid before it praying that the order may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of a new order. If the session of Parliament ends before such forty days as aforesaid have expired, the order shall be laid before each House of Parliament at the commencement of the next session as if it had not previously been laid.

(6) The Rules Publication Act, 1893, shall apply to any such order as if it was a statutory rule within the meaning of section one of that Act.

2. *Powers of Enforcing Milk and Dairies Orders.*—A local authority and their officers for the purpose of enforcing a Milk and Dairies Order and any regulations made thereunder shall have the same right to be admitted to any premises as a local authority within the meaning of the Public Health Act, 1875, and their officers have under section one hundred and two of that Act for the purpose of examining as to the existence of any nuisance thereon, and if such admission is refused, the like proceedings may be taken, with the like incidents and consequences, as to orders, payment, penalty, costs, expenses and otherwise, as in the case of a refusal to admit to premises for any of the purposes of the said section one hundred and two :

Provided that nothing in this section shall authorise any person, except with the permission of the local authority under the Diseases of Animals Acts, 1894 to 1914, to enter any cowshed or other place in which an animal affected with any disease to which those Acts apply is kept and which is situated in a place declared under those Acts to be infected with such disease.

3. *Power to Stop Supply of Milk likely to Cause Tuberculosis.*—(1) If the medical officer of health of a county or county borough is of opinion that tuberculosis is caused, or is likely to be caused, by the consumption of the milk supplied from any dairy in which cows are kept within such county or county borough, the provisions of the First

Schedule to this Act shall have effect with respect to the reports to be made and the steps to be taken with a view to stopping the supply of milk from the dairy, and, with a view to stopping such supply, orders may be made in accordance with that schedule, subject to such right of appeal and the payment of compensation in such cases as are provided therein.

(2) Where an order stopping the supply of milk is made under the said schedule a dairyman shall not be liable for an action for breach of contract if the breach is due to such order.

(3) If any dairyman, whilst any order made in accordance with the said schedule prohibiting the supply or use of milk is in force, supplies or uses any milk in contravention of this order he shall be guilty of an offence against this Act.

(4) The Local Government Board may by order direct that the council of any non-county borough within the county, which is a local authority for the purposes of the Diseases of Animals Acts, 1894 to 1914, shall exercise and perform within the borough the powers and duties of the county council under this and the next succeeding section, and where such an order has been made with respect to any non-county borough this and the next succeeding section shall apply as if the borough were a county borough.

4. *Obligation to Inspect Dairies in certain Cases.*—(1) If the medical officer of health of any local authority has reason to suspect that tuberculosis is caused, or is likely to be caused, by the consumption of any milk which is being sold or exposed or kept for sale within the area of the local authority, he shall endeavour to ascertain the source or sources of supply, and on ascertaining the facts shall forthwith give notice of them to the medical officer of health of the county or county borough in which the cows from which the milk is obtained are kept, whether the dairy where they are kept is within or without the area of the local authority, unless the local authority are themselves the council of that county or county borough.

(2) On the receipt of such notice it shall be the duty of the medical officer of health of the county or county borough to cause the cattle in the dairy to be inspected, and to make such other investigations as may be necessary.

(3) Sufficient notice of the time of the inspection shall be given to the local authority whose medical officer of health gave the notice, and to the dairyman to allow that officer or a veterinary inspector or other veterinary surgeon appointed by the authority, and, if desired, another veterinary surgeon appointed by the dairyman being present at the inspection if either party so desire.

(4) The council of the county or county borough on whose medical officer of health the notice is served shall send to the medical officer of health of the local authority who gave the notice copies of any reports which may have been made by the medical officer of health making the inspection, and of any veterinary or bacteriological or other reports which may have been furnished to him, and shall give him information as to whether any action has been taken upon those reports and as to the nature of that action.

5. *Prohibition of Sale of Tuberculous Milk.*—If a person—

(a) Sells, or offers or exposes for sale, or suffers to be sold or offered or exposed for sale, for human consumption or for use in the manufacture of products for human consumption; or

(b) Uses or suffers to be used in the manufacture of products for human consumption;

the milk of any cow which has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder, or from acute inflammation of the udder, or from any of the diseases specified in the Second Schedule to this Act, he shall be guilty of an offence against this Act, if it is proved that he had previously received notice from an officer of a local authority, or that he otherwise knew, or by the exercise of ordinary care could have ascertained, that the cow had given tuberculous milk, or was suffering from any such disease.

6. *Provisions as to Selling Milk in a Public Place.*—Every person who, himself or by his servant, in any highway or place of public resort sells milk from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address, and in default shall be liable on summary conviction to a fine not exceeding two pounds.

7. *Provisions as to Condensed, Separated, or Skimmed Milk.*—Every tin or other receptacle containing condensed, separated, or skimmed milk must bear a label, clearly visible to the purchaser, on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed, separated or skimmed milk in contravention of this section he shall be liable on summary conviction to a fine not exceeding ten pounds.

8. *Power to Take Samples of Milk.*—(1) It shall be lawful for an inspector of the Local Government Board, or the medical officer of health of a local authority, or any person provided with and, if required, exhibiting an authority in writing, from such an inspector or from the local authority or medical officer of health, to take for examination samples of milk at any time before it is delivered to the consumer:

Provided that the powers of a medical officer of health and of a person authorised by him or by the local authority under this section shall, except so far as the Local Government Board may otherwise direct, be exerciseable only within the area of the local authority.

(2) The result of an analysis or bacteriological or other examination of a sample of milk taken under this Act shall not be admissible as evidence in proceedings under this Act, or in proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, unless the provisions of the last-mentioned Acts which relate to the division of samples into parts are complied with, but if those provisions have been complied with, the result of the analysis shall be available for proceedings under the said Acts (as if it had been procured in accordance with those Acts) as well as for proceedings under this Act:

Provided that no proceedings shall be taken against any person unless at the time the sample was taken the milk was in his custody or control or was contained in a churn or other receptacle which had been sealed or closed in accordance with a Milk and Dairies Order.

(3) The medical officer of health or any other officer authorised for the purpose by a local authority within the area of which milk from any dairy situate outside that area is being sold or exposed or kept for sale, may by notice in

writing require the medical officer of health or other authorised officer of any other local authority, being an authority for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, to take samples of the milk at that dairy or in the course of transit from that dairy to the area of the first-mentioned local authority.

(4) Upon receipt of such notice it shall, subject to the provisions of sub-section (1) of this section, be the duty of the medical officer of health or other authorised officer of the other authority as soon as practicable to take samples and to forward, for analysis or bacteriological examination, to the officer who gave the notice a part of any sample so taken, and in taking a sample the officer shall, if so required by the notice, comply with the provisions of the Sale of Food and Drugs Acts, 1875 to 1907, which relate to the division of samples into parts.

The authority requiring the samples to be taken shall be liable to defray any reasonable expenses incurred, the amount whereof shall in default of agreement be settled by the Local Government Board.

For the purpose of the Sale of Food and Drugs Acts, 1875 to 1907, the sample shall be deemed to have been taken within the area of the officer who gave the notice, and proceedings under those Acts may be taken either before a court having jurisdiction within the district for which that officer acts or before a court having jurisdiction in the place where the sample was actually taken.

(5) In any proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, or this Act, the production of a certificate of the officer who took the sample under this section that the provisions of this section, as to the manner in which samples are to be dealt with, were complied with shall be sufficient evidence of compliance, unless the defendant requires that officer to be called as a witness.

(6) In the exercise at any railway station or upon any railway premises of the powers conferred upon him by this section, such inspector, medical officer of health, or other person so authorised as aforesaid shall conform to such reasonable requirements of the railway company owning or using such station or premises as are necessary to prevent the working of the traffic thereat being obstructed or interfered with.

9. *Amendment of Sale of Food and Drugs Acts.*—(1) The provisions of the Sale of Food and Drugs Acts, 1875 to 1907, in reference to the taking of samples of milk, and any proceedings in connexion therewith, shall be amended in accordance with the provisions contained in the Third Schedule to this Act.

(2) So much of any contract, made after the passing of this Act, as requires a purveyor of milk on a sample of his milk being taken under the Sale of Food and Drugs Acts, 1875 to 1907, to send to the person from whom he procured the milk any part of such sample or to give such person notice that a sample has been so taken, shall be null and void.

10. *Appointment of Veterinary Inspectors.*—(1) A local authority may, and when required by the Local Government Board shall, appoint or combine with another local authority in appointing one or more veterinary inspectors or employ for the purposes of this Act and the Milk and Dairies Orders any veterinary inspector appointed under the Diseases of Animals Act, 1894, and any local authority may, and when required by the Local Government Board shall, provide or arrange for the provision of such facilities for bacteriological or other examinations of milk as may be approved by the Board.

(2) Any order requiring a combination of local authorities for the purposes of this section may provide for all matters incidental to such combination, and in particular how the expenses incurred are to be apportioned.

11. *Regulations as to Imported Milk.*—The Local Government Board shall make regulations under the Public Health (Regulations as to Food) Act, 1907, for the prevention of danger arising to public health from the importation of milk and milk products intended for sale for human consumption or for use in the manufacture of products for human consumption.

12. *Establishment of Milk Depots.*—(1) The sanitary authority of any district may, with the approval of the Local Government Board, establish and thereafter maintain depots for the sale at not less than cost price of milk specially prepared for consumption by infants under two years of age, and purchase and prepare milk and provide such

laboratories, plant, and other things, and exercise and perform such other powers and duties, as may be necessary for the purposes of this section.

(2) The Local Government Board may attach such conditions to their approval as they may deem necessary.

13. *Enforcement of Duties of Local Authorities.*—(1) If a local authority fail to fulfil any of their duties under this Act, or under any Milk and Dairies Order, the Local Government Board may after holding a local inquiry make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duties, and any such order may be enforced by mandamus.

(2) Where the authority in default is a district council, the Local Government Board may determine that all or any of the powers of the council under this Act or the Milk and Dairies Orders be transferred to the county council, and those powers shall be transferred accordingly, and section sixty-three of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

14. *Penalty for Obstruction.*—If any person obstructs any inspector or other officer of the Local Government Board, or any medical officer of health, or any veterinary inspector or surgeon, or other officer of or person employed by a local authority, in the execution of his powers under this Act or any Milk and Dairies Order, or fails to give any such officer all reasonable assistance in his power, or to furnish him with any information he may reasonably require, he shall be guilty of an offence against this Act.

15. *Supplemental Provisions.*—(1) The Local Government Board may by order apply for the purposes of this Act the provisions of any public general Act relating to the holding of local inquiries by the Local Government Board, and the expenses of such inquiries, and the powers of the persons holding any such inquiry, and the manner in which notices may be served.

(2) A local authority may delegate to a committee any of their powers or duties (other than the power of raising rates) under the provisions of this Act or of any Milk and Dairies Order, and in such case anything required or authorised by those provisions to be done to or by the local authority may

be done to or by the committee to which such powers and duties have been so delegated.

(3) For the purpose of the exercise and performance of their powers and duties by sanitary authorities under this Act and the Milk and Dairies Orders the purposes of this Act and those Orders shall be deemed to be included amongst the purposes of the Public Health Act, 1875, or the Public Health (London) Act, 1891, as the case may require.

(4) Any inspection of cattle made in pursuance of this Act or any Milk and Dairies Order shall be carried out by a veterinary inspector or other properly qualified veterinary surgeon.

16. *Compensation to Existing Officers or Servants.*—If in consequence of the passing of the Milk and Dairies Act, 1914, or this Act or of anything done in pursuance or in consequence thereof any officer or servant of any local authority who held office at the passing of this Act suffers any direct pecuniary loss by abolition of office, or by diminution or loss of fees or salary, he shall be entitled to have compensation paid to him for such pecuniary loss by the local authority, and such compensation shall be determined in accordance with and subject to the conditions prescribed by section one hundred and twenty of the Local Government Act, 1888, and that section with the necessary adaptations shall apply accordingly.

17. *Expenses of Local Authorities.*—The expenses of local authorities under this Act and the Milk and Dairies Orders shall be defrayed—

(a) in the case of a county council, out of the county fund, as expenses for general county purposes, or, if an order of the Local Government Board so directs, as respects any such expenses as expenses for special county purposes charged on such part of the county as may be provided by the order ;

(b) in the case of the common council, out of the general rate ;

(c) in the case of the council of a metropolitan borough, as part of the expenses incurred by the council in the execution of the Public Health (London) Act, 1891 ;

(d) in the case of the council of a municipal borough or

urban or rural district, as part of their general expenses incurred in the execution of the Public Health Acts.

18. *Provisions as to Offences.*—(1) If any person commits an offence against this Act, he shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds and in the case of a second or subsequent offence fifty pounds, and if the offence is a continuing offence to a further fine not exceeding forty shillings for each day during which the offence continues.

(2) Proceedings against a dairyman for failure to comply with an order made under the First Schedule to this Act, requiring the dairyman not to supply milk from a dairy, may be taken before a court of summary jurisdiction, either in the place where the offence was committed or in the place where the dairy is situated, and shall be taken only by the authority by which the order was made.

(3) Where the occupier of a dairy is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and, if, after the commission of the offence has been proved, the occupier of the dairy proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and

(b) that the said other person had committed the offence in question without his knowledge, consent or connivance;

that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(4) When it is made to appear to the satisfaction of the authority by or on whose behalf proceedings are about to be taken—

(a) that the actual occupier of the dairy has used all due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and

(b) by what person the offence has been committed; and

(c) that it has been committed without the knowledge, consent, or connivance of the occupier of the dairy and in contravention of his orders;

proceedings shall be taken against the person who is believed to be the actual offender without first proceeding against the occupier of the dairy.

(5) The duty of taking proceedings for enforcing the provisions of section five of this Act shall rest on the county council or county borough council, without prejudice however to the power of a sanitary authority in a county to take such proceedings, and the duty of taking proceedings for enforcing the provisions of any Milk and Dairies Order shall rest on the local authority prescribed in the order, and the clerk of the local authority, or other officer whom the local authority may appoint, shall have power, if so authorised by the local authority, to institute and carry on such proceedings:

Provided that in cases where the Local Government Board make an Order under section three of this Act directing that the council of a non-county borough shall exercise and perform within the borough the powers and duties of a county council under sections three and four of this Act, the duty of taking proceedings for enforcing the provisions of section five of this Act in such borough shall rest on the council thereof and not on the county council.

(6) Notwithstanding anything contained in any Act to the contrary, all fines imposed in any proceedings instituted by or on behalf of a local authority in the exercise of their powers and duties under this Act shall be paid to the authority, and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(7) The foregoing provisions of this section shall not apply as respects offences under section six or seven of this Act, but in any prosecution of any such offence the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

19. *Interpretation.*—(1) In this Act unless the context otherwise requires—

The expression "dairy" includes any farm, cowshed, milk store, milk shop, or other place from which milk is supplied on, or for, sale or in which milk is kept or used for purposes of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, and, in the case of a purveyor of milk who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in the properly closed and unopened receptacles in which it was delivered to the shop, or a shop or other place in which milk is sold for consumption on the premises only;

The expression "milk" includes cream, skimmed milk, and separated milk;

The expression "dairyman" includes any occupier of a dairy, any cowkeeper, or any purveyor of milk;

The expression "purveyor of milk" (*a*) includes a seller of milk, whether wholesale or by retail;

The expression "medical officer of health" includes any duly qualified medical practitioner authorised by the council to act on behalf of the medical officer of health;

The expression "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or having such other veterinary qualifications as may be approved by the Board of Agriculture and Fisheries;

The expression "sanitary authority" as respects London means the sanitary authority for the purposes of the Public Health (London) Act, 1891, and elsewhere the council of a borough or of an urban or rural district, and the expression "sanitary district" means the district of such authority;

The expression "common council" means the mayor, aldermen, and commons of the City of London in common council assembled.

(2) Where milk is sold or exposed or kept for sale it shall be presumed to be sold or exposed or kept for sale for human consumption or for use in the manufacture of products for human consumption, unless the contrary is proved.

(3) Where milk is kept in any dairy, or in the custody or possession of any dairyman, it shall be presumed to be kept for purposes of sale, or manufacture for sale, unless the contrary is proved.

(4) The expression "local authority" in this Act shall include sanitary authorities and county councils, but with respect to the provisions of any Milk and Dairies Order, the order may prescribe by what local authority or authorities the several provisions thereof are to be enforced and executed, and any such order may provide for the giving of assistance and information by county councils to sanitary authorities and by sanitary authorities to county councils for the purpose of their respective duties under this Act or under any Milk and Dairies Order.

(5) The Scilly Islands shall be deemed to be a county and the council of those Islands the council of a county, and any expenses incurred by that council under this Act or the Milk and Dairies Orders shall be treated as general expenses of the council.

(*a*) **Purveyor of Milk.**—*In Spiers and Pond, Limited* v. *Green*, [1912] 3 K. B. 576; 77 J. P. 11; 82 L. J. K. B. 26; 29 T. L. R. 14; 10 L. G. R. 1050, it was held that the keeper of a railway refreshment room who sells three or four glasses of milk a week is not "carrying on the trade of a purveyor of milk."

20. *Application to London.*—(1) Section fifty-three of the Public Health Acts Amendment Act, 1907 (which confers powers to require dairymen to furnish lists of sources of supply), shall apply to London as if it were herein re-enacted with the substitution of references to sanitary authorities and districts of sanitary authorities for references to local authorities and the districts of local authorities, and any penalties imposed by the said section as so applied shall be recoverable summarily.

(2) Any provisions of the Public Health Act, 1875, applied by this Act shall, for the purposes for which they are so applied, extend to London, subject to necessary adaptations.

(3) A Milk and Dairies Order affecting London shall provide for the exercise and performance by sanitary authorities in London of all powers and duties under the order which would have been imposed or conferred on sani-

tary authorities if this Act had not been passed and the order had been made under section twenty-eight of the Public Health (London) Act, 1891, as amended by sections five and six of the London Government Act, 1899, except that the order may provide for the exercise and performance by the London County Council of powers and duties relating to the inspection of cattle in dairies.

(4) Nothing in this Act, or in any Milk and Dairies Order, shall affect the powers with respect to the registration of dairymen and purveyors of milk within their own area conferred on sanitary authorities in London by section five of the London County Council (General Powers) Act, 1908.

(5) The borrowing of moneys by any metropolitan borough council for the purposes of this Act shall be subject in all respects to the provisions of sections one hundred and eighty-three to one hundred and eighty-nine of the Metropolis Management Act, 1855, as amended by any subsequent Act.

(6) Where the authority in default is a metropolitan borough council the provisions of section one hundred and one of the Public Health (London) Act, 1891, shall apply in all respects as if such default had been made under the said Act.

21. *Short Title, Commencement, Extent, Repeal, and Savings.*—(1) This Act may be cited as the Milk and Dairies (Consolidation) Act, 1915, and shall come into operation on such date not being later than the expiration of one year after the termination of the present war as the Local Government Board may by order appoint.

(N.B.—*By s.* 1 *of the Act of* 1922, ante, p. 189, *the operation of this Act is postponed till the* 1*st September*, 1925.)

(2) This Act shall not extend to Scotland or Ireland.

(3) The enactments specified in the Fourth Schedule to this Act shall, except so far as they relate to Scotland or Ireland, be repealed to the extent mentioned in the third column of that Schedule, and there shall also be repealed, as from the expiration of one year after the commencement of this Act, so much of any local Act as deals with any of the matters dealt with by any of the provisions of this Act :

Provided that nothing in this repeal shall affect any order or regulations made under any enactment mentioned in the said Schedule, but any such order or regulations shall, until

altered or revoked, continue in force as if made under this Act.

(4) Nothing in this Act shall prejudice or affect the enactments relating to milk and dairies mentioned in the Fifth Schedule to this Act or any other enactments relating to milk and dairies, except so far as such enactments are expressly repealed, amended, or extended by this Act.

SCHEDULES.

FIRST SCHEDULE.

PROCEDURE FOR STOPPING SUPPLY OF MILK UNDER SECTION THREE.

(1) The medical officer of health of the county or county borough in which the cows from which the milk is obtained are kept shall report the matter to the council of such county or county borough (hereinafter referred to as the responsible authority).

(2) His report shall be accompanied by the veterinary or bacteriological reports which have been furnished to him.

(3) On the receipt of the report or a copy of the report from the medical officer of health, the responsible authority may serve on the dairyman notice to appear before them, or furnish an explanation in writing, within such time not less than forty-eight hours from the time of the service of the notice on him as may be specified in the notice, to show cause why such an order as is hereinafter mentioned should not be made.

(4) The notice shall be accompanied by a copy of the reports made in respect of the dairy.

(5) The responsible authority if, in their opinion, the dairyman has failed to show cause why an order should not be made, may make an order prohibiting him, either absolutely or unless such conditions as may be prescribed in the order are complied with, from supplying for human consumption, or using or supplying for use in the manufacture of products for human consumption, any milk from the dairy or from any particular cow or cows therein until the order has been withdrawn in accordance with the provisions of this Schedule.

(6) The order shall specify the grounds on which it is made.

(7) On the making of such an order a copy of the order shall forthwith be served on the dairyman, and notice of the facts shall also be served on the Local Government Board and the Board of Agriculture and Fisheries.

(8) Where no order is made, the responsible authority shall allow the dairyman any reasonable expenses incurred by him in showing cause why the order should not be made.

(9) An order prohibiting the supply or use of milk made under this Schedule shall forthwith be withdrawn, and notice of withdrawal served on the dairyman as soon as may be after the responsible authority or their medical officer of health is satisfied that the milk supplied from the dairy is not likely to cause disease.

(10) The medical officer of health shall have power to withdraw an order if so authorised by the responsible authority.

(11) If a dairyman is aggrieved by the making or continuance of an order prohibiting the supply or use of milk, he may by complaint under the Summary Jurisdiction Acts appeal to a court of summary jurisdiction.

(12) A court of summary jurisdiction on such appeal may confirm, vary, or withdraw the order and may direct to and by whom the costs of the appeal are to be paid.

(13) Pending the determination of the appeal, an order shall remain in force unless previously withdrawn.

(14) If an order prohibiting the supply or use of milk is made against a dairyman he shall unless the order has been made in consequence of his own default or neglect be entitled to recover from the responsible authority full compensation for any damage or loss which he may have sustained by reason of the making of the order. The dairyman shall also be entitled to full compensation for any damage or loss which he may sustain in consequence of the responsible authority unreasonably neglecting or refusing to withdraw an order made against him.

(15) In the case of an appeal under this Schedule being allowed, the court to which the appeal is made shall determine and state whether the order, the subject of appeal, was made in consequence of the default or neglect of the

dairyman or the withdrawal has been unreasonably neglected or refused.

(16) Any dispute as to the fact of damage or loss or as to the amount of compensation shall be settled by arbitration in the same manner as provided by the Public Health Act, 1875, and any sum awarded as compensation shall be recoverable as a civil debt.

(17) If the compensation claimed does not exceed twenty pounds it may at the option of either party instead of being settled as hereinbefore provided be settled by, and recoverable before, a court of summary jurisdiction.

SECOND SCHEDULE.

DISEASES OF COWS IN ADDITION TO TUBERCULOSIS TO WHICH SECTION FIVE APPLIES.

Acute mastitis.
Actinomycosis of the udder.
Anthrax.
Foot-and-mouth disease.
Suppuration of the udder.
Any other disease affecting cows which by a Milk and Dairies Order is declared to be a disease for the purposes of section five of this Act.

THIRD SCHEDULE.

AMENDMENT OF SALE OF FOOD AND DRUGS ACTS.

(1) Where, under the Sale of Food and Drugs Acts, 1875 to 1907, a sample of milk is procured from a purveyor of milk, he shall, on being required to do so by the person by whom or on whose behalf the sample was taken, state the name and address of the seller or consignor from whom he received the milk.

(2) The local authority in whose district the sample was taken may take or cause to be taken one or more samples of milk in course of transit or delivery from such seller or consignor.

Within sixty hours after the sample of milk was procured from the purveyor he may serve on the local authority a notice stating the name and address of the seller from whom

he received the milk and the time and place of delivery to the purveyor by the seller or consignor of milk from a corresponding milking and requesting them to take immediate steps to procure, as soon as practicable, a sample of milk in the course of transit or delivery from the seller or consignor to the purveyor, unless a sample has been so taken since the sample was procured from the purveyor, or within twenty-four hours prior to the sample being procured from the purveyor, and where a purveyor has not served such notice as aforesaid, he shall not be entitled to plead a warranty as a defence in any such proceedings :

Provided that the purveyor shall not have any such right to require that such a sample shall be taken in cases where the milk, from which the sample procured from the purveyor was taken, was a mixture of milk obtained by the purveyor from more than one seller or consignor.

If a purveyor has served on the local authority such a notice as aforesaid, and the local authority have not procured a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, shall be taken against the purveyor in respect of the sample of milk procured from him.

(3) Any sample of milk so taken in the course of transit or delivery shall be submitted for analysis to the analyst to whom the sample procured from the purveyor is or was submitted.

(4) If proceedings are taken against the purveyor of milk, a copy of the certificate of the result of the analysis of every sample so taken in the course of transit or delivery shall be furnished to the purveyor, and every such certificate shall, subject to the provisions of section twenty-one of the Sale of Food and Drugs Act, 1875, be sufficient evidence of the facts stated therein, and shall be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as he purchased it.

(5) The local authority of the district in which the first-mentioned sample was taken may, instead of, or in addition to, taking proceedings against the purveyor of milk, take proceedings against the seller or consignor.

(6) If a sample of milk of cows in any dairy is taken in course of transit or delivery from that dairy, the

owner of the cows may, within sixty hours after the sample of milk was procured, serve on the local authority a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows, and the foregoing provisions shall apply accordingly:

Provided that the person taking the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
41 & 42 *Vict.* c. 74.	*The Contagious Diseases (Animals) Act,* 1878.	*The whole Act so far as unrepealed.*
49 & 50 *Vict.* c. 32.	*The Contagious Diseases (Animals) Act,* 1886.	*The whole Act so far as unrepealed.*
62 & 63 *Vict.* c. 51.	*The Sale of Food and Drugs Act,* 1899.	*Sections nine and eleven.*
4 & 5 *Geo.* 5, c. 49.	*The Milk and Dairies Act,* 1914.	*The whole Act.*
5 & 6 *Geo.* 5, c. 59.	*The Milk and Dairies Acts Postponement Act,* 1915.	*In section one "the Milk and Dairies Act,* 1914, *and" and "the Local Government Board and" and "respectively."*

FIFTH SCHEDULE.

ENACTMENTS SAVED.

The provisions of the Public Health Acts and the Public Health (London) Act, 1891, with respect to nuisances and the sale of food so far as the same relate to milk and dairies.

The Sale of Food and Drugs Acts, 1875 to 1907, so far as they relate to the sale of milk.

The Public Health (London) Act, 1891, ss. 69 and 71.

The Public Health Acts Amendment Act, 1907, ss. 53 and 54.

The Infectious Diseases Prevention Act, 1890, s. 4.

CIRCULARS TO CLERKS TO LOCAL AUTHORITIES UNDER THE SALE OF FOOD AND DRUGS ACTS, 1875 TO 1907.

ANALYSTS' REPORTS.

LOCAL GOVERNMENT BOARD,
1*st January*, 1879.

SIR,—I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, and to remind you that a copy of the reports made by public analysts for the several quarters of the year 1878 should be forwarded to the Board in the course of the present month.

I am to observe that, in some of the reports hitherto received, the Board find that analysts have given certain details of the analysis made, but have omitted to state which samples are, in their opinion, to be classed as genuine, and which as adulterated.

I am to refer to the enclosed specimen copy of the form in which the Board are desirous that the quarterly reports should be made, and which provides for showing—

(1) The description of article submitted for analysis;
(2) Whether or not the sample was submitted to the analyst by an officer acting under direction of a local authority, under section 13 of the Act;
(3) *Whether the sample was genuine or adulterated*, and, if adulterated, what were the nature and extent of the adulteration;
(4) The sum paid in respect of the analysis;
(5) The observations, if any, which the analyst may wish to make in reference to the analysis;

and I am to state that the Board would be glad if this information were in future given with regard to each sample analysed.

I am to add that it would be convenient, for statistical purposes, if the quarterly reports were uniformly made up to the last day of March, June, September, and December respectively.

A copy of so much of the Board's annual report for 1877—1878, as relates to the reports of public analysts for the year 1877, with a numerical abstract of those reports, is enclosed for the information of the authority.

I am, Sir, your obedient Servant,
JOHN LAMBERT,
Secretary.

[NOTE.—See also Memorandum of January, 1921, *post*, p. 297.]

DIRECTIONS AS TO TAKING SAMPLES.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
26th February, 1894.

SIR,—I am directed by the Local Government Board to state that they have received from the Commissioners of Inland Revenue a communication with reference to the portions of samples forwarded to the chemical officers of their department under the 22nd section of the Sale of Food and Drugs Act, 1875, from which it appears that in some instances the quantities have been so small as to cause difficulties in the operations of analysis; that in others the packing has been defective; and that in certain instances, in the case of perishable articles, there has been what has seemed an unnecessarily long interval between the original purchase and the receipt of the sample at Somerset House.

The insufficiency referred to is doubtless generally due to the smallness of the sample purchased under section 13 of the Act, but also, occasionally, to the fact that the parts into which, under section 14, the sample is divided are not made equal.

The chemical officers of the Inland Revenue suggest that the following rules should be observed in this matter:

1. The quantities of the samples purchased under sec-

tion 13 should not be less, in the case of milk (*a*) than 1 pint; butter (*b*), $\frac{3}{4}$ of a lb.; lard, $\frac{3}{4}$ of a lb.; coffee, $\frac{3}{4}$ of a lb.; spirits, $\frac{3}{4}$ of a pint.

2. The division under section 14 should be made as nearly equally as possible, so that the portion reserved may be not less than one-third of the whole.
3. The reserved portion of such samples as butter (*b*) and lard should, as soon after purchase as possible, be placed, without paper (since paper acts as an absor bent), in a dry, wide-mouthed stoppered bottle or in an earthenware jar, securely corked so as to exclude the air.
4. The bottle used for the reserved portion of milk (*a*) should be of such capacity that the milk may nearly fill it. (The use of bottles much too large for the quantity is apt to result in such a churning, if the samples are sent by railway, as to cause the separation of the fat.)
5. The corks used should be new and sound.

The Board request that the officers by whom samples are obtained for analysis may be instructed to have regard to these rules.

I am also to suggest that the officers referred to should be impressed with the importance of securing the utmost promptitude, both as regards the transmission of samples to the public analysts immediately after purchase, and as regards the subsequent stages of the case where legal proceedings are taken. It might be well, too, that the attention of the public analyst should be called to the desirability of completing his analyses as soon as practicable after receipt of the articles sent to him.

I am at the same time to state that the Board have received from the Commissioners of Inland Revenue a report (*c*) from their chief chemical officer showing the results of certain investigations made by him with regard to the composition of milk; and I am to request that you will have the goodness to forward to the public analyst one of the copies of that report (*c*) which are herewith enclosed.

I am, Sir, your obedient Servant,

HUGH OWEN,

Secretary.

(*a*) **Milk.**—Further directions for taking samples of milk will be found in Circular Letters of the Board of Agriculture, dated December 28th, 1901, *post*, p. 264, and August 17th, 1903, *post*, p. 269.

(*b*) **Butter.**—Further directions for taking samples of butter will be found in a Circular Letter of the Board of Agriculture, dated July 13th, 1903, *post*, p. 267.

(*c*) **Report of Chief Chemical Officer.**—This was a report by Dr. J. Bell, C.B., F.R.S., containing an elaborate investigation into the composition of the milk of 273 cows and the mixed milk of 55 dairies. Its result was to show that nearly the whole of the milk investigated came up to or exceeded the standard which has since been adopted by the Sale of Milk Regulations, 1901 (*ante*, p. 214). It is therefore deemed unnecessary to set out the report in full.

REGISTRATION OF MANUFACTORIES OF MARGARINE AND MARGARINE-CHEESE.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
27*th February*, 1900.

SIR,—I am directed by the Local Government Board to advert to their Order dated the 22nd day of December, 1887, issued under section 9 of the Margarine Act, 1887, directing the manner of registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority.

In view of the Sale of Food and Drugs Act, 1899, which extends the provisions of the Margarine Act, 1887, as amended by that Act, to margarine-cheese and to the registration of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on, the Board have deemed it expedient to rescind the order above-mentioned and to issue a fresh order, directing the manner of registration of manufactories of margarine or margarine-cheese, and of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

The new Order provides that where a manufactory of

margarine, or an owner or occupier carrying on the manufacture of margarine, has been duly registered, and the registration has effect at the date of the Order, the registration shall, subject to the provisions of Article 4 of the Order, continue in force.

Copies of the Order are enclosed.

I am, Sir, your obedient Servant,

S. B. PROVIS,
Secretary.

The Clerk to the Local Authority.

PUBLIC ANALYSTS: REGULATION AS TO COMPETENCY.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
8th March, 1900.

SIR,—I am directed by the Local Government Board to draw attention to the provisions of sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51). The former sub-section provides that it shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and the latter that any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Board.

The Board have issued an Order, of which two copies are enclosed, prescribing the regulation which they have framed under the above enactment.

It will be observed that the regulation requires that every person appointed on or after the First day of January, 1900, to the office of public analyst shall furnish such proof as the Board may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy; and the Order proceeds to indicate the nature of the documentary evidence to be comprised in such proof. Such evidence of competency is to be furnished by the public analyst to the local authority by whom he is appointed; and it is to be transmitted to the Board by that

authority when applying for the Board's approval of the appointment.

In the case, however, of any person who was appointed to the office of public analyst with the approval of the Board between 1st January, 1891, and the date of the Order, or who is appointed to that office for the first time after the last-mentioned date, the regulation will not apply in the event of his subsequent appointment as public analyst.

As regards the reference in the Order to a person or body of persons whom the Board may from time to time recognise as competent to confer the requisite qualification or to test the skill or knowledge of which proof is required by the Order the Board may state that it would accord with their existing practice to accept as sufficient documentary evidence of the requisite qualification under the Acts, the diploma of fellowship or associateship of the Institute of Chemistry of Great Britain and Ireland, together with the certificate granted by the Institute after an examination, conducted by them on lines approved by the Board, in therapeutics, pharmacology, and microscopy.

The possession of a diploma as a registered medical practitioner is accepted as sufficient proof of competency in microscopy and therapeutics, and it would only be necessary that a medical practitioner appointed as a public analyst should furnish evidence of competent skill in and knowledge of analytical chemistry.

Evidence of skill or knowledge on the part of a candidate in respect of any of the qualifications referred to as requisite, which is tendered by an individual, must be from a person recognised as entitled to speak with authority as to proficiency in the particular qualification in question.

The term "local authority" is used in the Order with the meaning assigned to it by section 25 of the Sale of Food and Drugs Act, 1899, that is to say: "Any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts." The section also provides that "the expression 'public analyst' means an analyst so appointed."

I am, Sir, your obedient Servant,

S. B. Provis,
Secretary.

The Clerk to the Local Authority.

SALE OF MILK REGULATIONS.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
28*th December*, 1901.

SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 Vict. c. 51.)

SIR,—I am directed by the Board of Agriculture to bring under the notice of your local authority the following observations with reference to the Regulations relating to the sale of milk in Great Britain, which, in pursuance of the powers conferred upon the Board by section 4 of the Sale of Food and Drugs Act, 1899, were made by the Board on the 5th August, and came into operation on the 1st September, 1901.

The Regulations were as follows:

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

In the Regulations the limits below which a presumption

is raised that the milk is not genuine were necessarily fixed at figures lower than those which are usually afforded by genuine milk, in which the proportion of milk-fat and non-fatty solids very frequently exceeds the percentages specified above. It is therefore important that local authorities should keep steadily in view the possibility of the artificial reduction of the quality of natural milk to the official limits by the abstraction of cream, or the addition of separated milk, or of water, and arrangements should be made for the taking of samples and the submission of the same for analysis whenever the existence of malpractices of the kind is suspected. In this connection, it may be observed that the evidence given before the Milk Regulations Committee [Cd. 491], tended to show that the practice of fraudulently mixing separated milk with new milk has become increasingly prevalent, particularly in some of the larger towns.

Although the quality of genuine milk offered for sale will usually be well above the official limits of milk-fat and non-fatty solids, there may occasionally, and especially in certain seasons of the year, be cases in which a sample of genuine milk may fall below those limits. To meet cases of this kind it is suggested that in the absence of any special circumstances indicating that the case is a fraudulent one, the local authority might, in the first instance, call the vendor's attention to the analyst's report, and ask him whether he desires to offer any explanation, and if the explanation is one they are able to accept, they might, in the exercise of their discretion, refrain from the institution of proceedings or withdraw any summons which, in order to prevent the failure of proceedings, by reason of the time-limit imposed by the Act, it may have been necessary to take out. But it may be desirable that further samples of milk should be taken in such cases, in order that a satisfactory conclusion as to the character of the milk supplied may be arrived at.

Cream.

The Milk Regulations Committee reported that the evidence submitted to them went to show that it was a common practice to add gelatin to cream for the purpose of giving it a fictitious appearance of richness or thickness. Local authorities are urged to take steps to ascertain whether this form of adulteration is practised within their districts, and

if a public analyst reports the presence of gelatin or other similar substance in a sample of cream, the local authority concerned should consider whether the case is one in which proceedings might not with advantage be instituted under section 6 of the Sale of Food and Drugs Act, 1875.

COLLECTION AND RETENTION OF SAMPLES.

It is desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of milk procured under the provisions of the Sale of Food and Drugs Acts, and the following recommendations have been drawn up for the guidance of the local officials employed in this work:—

(1) The quantity to be purchased should not be less than one pint, except that it may be expedient to purchase only half-a-pint in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample under section 14 of the Act of 1875, as amended by section 13 of the Act of 1899, should be made as equally as possible, so that the portion reserved by the purchaser may be not less than one-third of the whole.

(3) The bottle used for each divided part should have a narrow neck, and be of such capacity that the milk may nearly or quite fill it. The shape of bottle known as "Winchester" is strongly recommended, but in any case the bottles should have rounded sides in order to give security to the sample during transit by post or otherwise.

(4) Corks only should be used; and these should always be new and sound, and fitting so tightly as to secure the contents without any aid from the wax which is subsequently used for sealing the sample. It is most desirable that the sealing should be carried out in such a way as to prevent any attempt to remove the cork. It is therefore recommended that the cork should be slit down to one-fourth of its length and the string drawn through and securely fastened round the neck, the ends being afterwards carried to the top of the cork and sealed thereon.

(5) Special attention should be given that the reserved portion of milk be kept in as equable and cool a temperature as possible, pending its production in court in instances where proceedings are taken; and, if directed by the justices to be referred to the Government laboratory, it should be carefully packed so as to secure its safe transmission.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,
T. H. ELLIOTT,
Secretary.

SAMPLES OF BUTTER.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
13*th July*, 1903.

SIR,—I am directed by the Board of Agriculture to draw the attention of your local authority to the fact that samples of butter, alleged to contain water in excess of the proportion indicated by the Board in their "Sale of Butter Regulations, 1902," are frequently received at the Government Laboratory after the lapse of one or two months from the time that the samples were taken, and that subsequently to the date of purchase they have been kept by the inspector in the paper in which they were originally bought. Under these circumstances it is quite impossible for the Government Laboratory to obtain upon analysis figures representing the amount of water present at the time of purchase; and discrepancies between their results and those of the analysts on which the charge is raised are inevitable.

It is very desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of butter taken under the Sale of Food and Drugs Acts, and the following recommendations have been drawn up for the guidance of the local officials employed in this work:

(1) The quantity to be purchased should not be less than one pound, except that it may be expedient to purchase only half a pound in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample into three parts should be made as equally as possible, so that the portion reserved by the purchaser may be not less than one-third of the whole. It is desirable that each portion should consist of one piece only.

(3) The portions should *not* be wrapped in paper, but should be placed, without pressure, in dry and clean screw-capped bottles in such manner that the water present may be retained in the butter.

(4) The screw-capped bottle should be provided with a cork-lined metallic lid. The mouth should be as nearly as possible the full width of the bottle, and the cork lining of the lid should be firmly screwed down against the edge of the bottle.

(5) The bottle, labelled with the necessary particulars, should be enclosed in an envelope of stout paper which should be secured with the official seal.

(6) The reserved portion should be kept in a cool dark place pending its production in court in the event of proceedings being taken, and if directed by the court to be referred to the Commissioners of Inland Revenue it should be carefully packed in order to ensure its safe transmission to the Government Laboratory.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 26th, 1894, *ante*, p. 259.]

DECOMPOSITION OF MILK SAMPLES.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
17*th August*, 1903.

SIR,—I am directed by the Board of Agriculture to acquaint you, for the information of your local authority, that the fact that samples of milk referred to the Government Laboratory under the provisions of the above Acts are invariably sour when received has occasionally given rise to inquiries, by magistrates' clerks and others concerned with the working of the Acts, as to the practicability of making a satisfactory analysis of sour milk, with a view of substantiating or disproving an allegation that the milk has been mixed with water, or that fat has been abstracted from it.

It therefore appears desirable that the Board should state that, except in a limited number of exceptional cases to be hereafter referred to, there is no practical difficulty in accurately inferring the composition of the milk when fresh from the analysis of the milk when sour.

The change which takes place in a sample of milk kept from contact with air, as in a bottle nearly full of the sample, and fitted with a good sound cork sealed with wax, is, as a rule, comparatively slight. The causes and nature of this change have been carefully studied by many observers, and they have been found to be perfectly definite in character. Without going into details concerning the fermentative changes to which milk is liable, it may be stated that the changes which affect the analysis, and, therefore, the inference to be drawn from the results, are concerned with the non-fatty solids only, and more particularly with the milk-sugar. The milk-sugar gives rise, either proximately or remotely, to a variety of products, the most important of which are lactic acid, ethyl alcohol, and acetic acid; but it can be shown that the only quantitative determinations which need be made in order to determine the loss in the non-fatty matter by keeping are the proportion of alcohol, reckoned as proof-spirit, and the amount of free volatile acid, together with the ammonia derived from the alteration of the casein, or proteid substance, in the milk. The slight alterations in weight consequent on the hydrolysis and

conversion of lactose into lactic acid, and the formation of certain so-called bye-products of alcoholic fermentations, are partly positive and partly negative in direction, but their joint effect is too small to have any appreciable influence on the result.

The entire correction, which, of course, is always additive in the case of a properly preserved sample from three to six weeks old, is fairly constant, and may be said to range from 0·2 to 0·3 per cent. In a few cases it has been found to be as low as 0·1 per cent., and in very exceptional cases, as in badly-secured samples, or in bottles only partially filled, it has risen to 0·7 or 0·8 per cent.

If the fermentation has passed into the butyric acid stage, the amount of free acid is greatly increased, and owing to the separated casein it is sometimes impossible to get the sample into a proper and uniform condition for analysis. In such cases the Government Laboratory declines to proceed with the examination. Such a result, however, practically never happens in the case of samples which have been properly taken and kept by the inspectors pending the appeal to the Government Laboratory.

The details of the methods of analysis adopted in the Government Laboratory were fully inquired into by the committee which preceded the issue of the Sale of Milk Regulations in 1901, and are given in Appendix XXIX. to the minutes of evidence taken before the Departmental Committee on Milk and Cream Regulations [Cd. 484].

The following tables [Cd. 484, Appendix XXIX.] give the results of the analysis of a series of milks analysed in the fresh state and after the lapse of several weeks. The examination was carried beyond the time at which a milk would be referred to the Government Laboratory under the Food and Drugs Acts, but it will be seen that the changes can be accurately followed and allowed for. The comparison of the corrected non-fatty solids with the solids of the fresh milk shows that the variations are not greater than may occur in duplicate determinations of the constituents of a fresh milk.

WHOLE MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
(1)	8·97	4·08	21	8·71	4·02	·20	·26
(1A)	8·97	4·08	27	8·74	3·97	·21	·23
(1B)	8·97	4·08	50	8·61	4·00	·34	·36
(1)	8·97	4·08	85	8·49	4·09	·49	·48
2	8·99	3·17	27	8·60	3·16	·35	·39
3	9·12	4·16	42	8·82	4·18	·33	·30
3A	9·12	4·16	102	8·88	4·18	·25	·24
4	9·02	4·72	41	8·56	4·65	·58	·46
5	9·02	3·28	52	8·76	3·25	·20	·26
5A	9·02	3·28	79	8·53	3·34	·49	·49
5B	9·02	3·28	93	8·35	3·27	·61	·67
6	9·13	4·49	57	8·88	4·35	·23	·25
8	9·52	4·06	74	9·25	3·92	·35	·27
9	9·27	4·07	77	8·91	4·06	·32	·36
10	9·11	4·19	91	8·24	4·14	·76	·87
11	9·34	4·07	91	9·01	4·01	·41	·33
12	8·42	3·70	91	8·14	3·69	·26	·28
13	8·83	5·32	91	8·56	5·20	·31	·27
14	9·20	3·98	91	8·80	3·83	·39	·40

MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER HAS BEEN ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
1	8·14	3·44	14	7·96	3·41	·27	·18
(2)	8·14	3·44	30	7·81	3·40	·42	·33
3	8·24	2·79	38	7·88	2·78	·33	·36
4	8·24	2·79	38	7·73	2·76	·50	·51

SEPARATED MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	9·66	·14	27	9·25	Not determined.	·22	·41
1A	9·66	·14	36	9·34		·13	·32
1B	9·66	·14	65	9·35		·26	·31
2	8·91	·09	28	8·62		·28	·29
2B	8·91	·09	37	8·60		·20	·31
3	8·61	·13	30	8·33		·24	·28
3A	8·61	·13	37	8·29		·28	·32
3B	8·61	·13	91	7·93		·58	·68

SEPARATED MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER WAS ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	8·18	—	21	7·86	Not determined.	·24	·32
1A	8·18	—	387	6·71		1·50	1·47
1B	8·18	—	388	6·64		1·56	1·54
1C	8·18	—	401	6·71		1·50	1·47
2	7·67	—	22	7·22		·33	·45
2A	7·67	—	387	6·24		1·49	1·43
3	7·76	—	73	7·11		·55	·65
4	7·80	—	185	6·22		1·59	1·58
4A	7·80	—	188	6·19		1·69	1·61

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority and they will be glad to forward you additional copies for distribution amongst the members of your local authority

and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,
T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 26th, 1894, *ante*, p. 259.]

ADULTERATION AND ANALYSIS OF MILK.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place,
London, S.W.,
16*th March*, 1905.

SIR,—I am directed by the Board of Agriculture and Fisheries to advert to their circular letter of the 28th December, 1901, of which a copy is herewith enclosed, and to inform you that they have received numerous representations from dairy farmers and others complaining of the institution of proceedings under the Sale of Food and Drugs Acts, 1875 to 1899, in cases in which, as is alleged, the deficiency of milk-fat or milk-solids as compared with the limits laid down in the Sale of Milk Regulations, 1901, was due to accidental causes and not to any fraudulent action on the part of the vendor.

In the circular letter above referred to, the Board suggested that in the absence of any special circumstances indicating the commission of fraud, the local authority might in the first instance call the attention of the vendor to the adverse report of the analyst and afford him an opportunity of submitting any explanation he might desire to offer on the subject. The Board further expressed the opinion that if the explanation were one which the local authority felt able to accept, they might, in the exercise of their discretion, refrain from the institution of proceedings, or withdraw any summons which it might have been necessary to take out in order to avoid the failure of proceedings, at the same time making arrangements for the taking of further samples of the milk supplied, in order that

a satisfactory conclusion as to its character might be arrived at.

The experience of the past three years has confirmed the propriety of the views expressed by the Board on the subject, and they would be glad to learn that your local authority have made arrangements to proceed on the lines suggested, and if not, that the matter will be further considered at an early date.

I am also to say that the Board think it very desirable that farmers, dairymen and all other cowkeepers should have samples of the milk of their cows tested from time to time, so that they may be able to watch the seasonal and other variations in the quantity of milk-fat contained in the milk, and by modifications in the feeding, housing, or time of milking, and if necessary by the disposal of animals giving milk of an exceptionally poor character, keep the quality of their milk at a satisfactory level. The Board have ascertained that with the object of assisting farmers thus to acquaint themselves with the character of their milk the various agricultural colleges and agricultural departments of university colleges, etc., are willing to determine for a fee of sixpence the percentage of milk-fat in any sample of milk which may be sent to them from the counties with which they are respectively associated. Detailed information as to the arrangements thus made is given in the Journal of the Board of Agriculture for March, 1905. The Board would be glad if your local authority would co-operate with them in the matter, and do what is possible to facilitate the testing of milk in the manner proposed.

The Board are satisfied that if the keepers of cows will from time to time test the quality of their milk for themselves, and if the local authorities will adopt some such arrangement as that above suggested for hearing what the vendor has to say for himself before taking the case into open court, any legitimate ground of complaint on the part of producers as to the administration of the law, so far as the adulteration of milk is concerned, will speedily be removed.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,

Secretary.

PRESERVATIVES IN MILK.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
11*th July*, 1906.

SIR,—I am directed by the Local Government Board to request the attention of the council to the subject of the addition of preservatives to milk.

A serious objection to the use of preservatives in milk has been pointed out in the report of the Departmental Committee on Preservatives and Colouring Matters in Food who state that preservatives in milk "may be relied on to protect those engaged" in the milk traffic "against the immediate results of neglect of scrupulous cleanliness. Under the influence of these preservatives milk may be exposed without sensible injury to conditions which otherwise would render it unsaleable. It may remain sweet to taste and smell and yet have incorporated disease germs of various kinds, whereof the activity may be suspended for a time by the action of the preservative, but may be resumed before the milk is digested."

This Committee, after hearing evidence from milk traders, concluded that the addition of a preservative to milk is not necessary for the purposes of the milk trade, even in hot weather or where the supply of so large a place as London is concerned, and the Committee recommended that no preservatives should be added to milk.

In making this recommendation the Committee had special regard to evidence received as to two classes of preservative substances which, under various names, are frequently used as preservatives in milk, viz. (1) formalin (a 40 per cent. solution of formic aldehyde) and other preparations of formic aldehyde; and (2) boron preservatives (boric acid, borax, or mixtures of boric acid and borax). The Committee considered that the addition to milk of formalin or preparations of formalin, even when the amount which could be detected was minute, was objectionable, on account of the alterations effected by formalin in the character of certain of the constituents of milk and of its ability to interfere directly with digestive processes.

Although in the view of the Committee boron preserva-

tives might reasonably be employed in the case of certain foods, within defined limits and subject to a declaration as to their presence and amount, the Committee recommended their exclusion from milk altogether; partly for the reasons above indicated, and partly also in consideration of the immense importance of pure milk for the nutrition of infants, invalids, and convalescents, and of the comparatively large quantity of milk which may be taken, particularly by children, in comparison with the other foods in question. Moreover the Committee had evidence "pointing to an injurious effect of boracised milk upon the health of very young children."

Since the report of the Committee was made the Board have from time to time had before them further evidence on the subject, and this supports the conclusions of the Committee not only as to the objections to the use of preservatives on the ground of public health, but also as to the ability of milk traders to conduct their business without use of preservatives. Thus in certain boroughs in London and elsewhere in which milk samples are systematically tested for preservatives, the presence of preservatives in milk, at any time of the year, has been found to be exceptional; and there is evidence to show that a very large number of milk vendors conduct their business without the use of these substances, even where the milk comes long distances by rail.

In some districts action under the Sale of Food and Drugs Acts has been frequently and successfully taken in order to bring about the disuse of preservatives in milk. Proceedings instituted against vendors of milk containing preservatives have usually been taken under section 6 of the Sale of Food and Drugs Act, 1875. Conviction has followed, it being held that when the purchaser who asks for milk is supplied with milk plus a preservative he does not receive an article of the nature, substance and quality demanded, and is prejudiced thereby.

The Board are of opinion that action under the Sale of Food and Drugs Acts in regard to preservatives in milk is desirable, and that this subject deserves attention from all authorities in England and Wales charged with the execution of these Acts.

In this connection the following suggestions are made for

adoption by the council where a similar procedure is not already followed :—

1. INFORMATION FROM PUBLIC ANALYSTS.

The Board suggest that public analysts should be requested—

(a) to record in their quarterly reports how many milk samples have been examined during the quarter with a view to ascertaining the presence of substances commonly in use as preservatives, and with what result; and to draw the attention of the council to instances where the use of preservatives in milk other than boron preservatives and formalin have come under notice;

(b) to report, on completion of analysis, the facts as to samples of milk which have been found to contain any added preservative.

2. ADMINISTRATIVE ACTION WHERE PRESERVATIVES IN MILK ARE REPORTED.

The Board would suggest that the council should notify to milk traders, by circular or otherwise, that action will be taken under the Sale of Food and Drugs Acts in instances where preservatives are reported in milk.

Subject to this being done, and to exceptional cases of the kind referred to under the heading numbered 3 below, the Board consider that when the presence of any added preservative is reported in a sample of milk taken in accordance with the provisions of the Sale of Food and Drugs Acts, the case should in ordinary circumstances be regarded as one for the institution of proceedings under those Acts.

3. DECLARATION AND NOTICES.

The Board think it desirable to draw attention to cases in which the vendor of the milk, with the object of escaping liability under section 6 of the Sale of Food and Drugs Act, 1875, declares to the purchaser by means of a notice, label or otherwise that he does not sell "milk" as such, or that its quality in regard to preservatives or other constituents is not guaranteed, or that it contains some added preservative.

The Board would suggest the desirability of frequent sampling in cases where "milk" is sold subject to declarations of the kind, with a view to ascertaining the condition of such milk in regard to preservatives.

The nature of the declaration made should in all cases be carefully recorded by the officer taking the sample, and should also be reported to the analyst when the sample is transmitted for analysis.

Where preservatives are reported in milk thus sold, the question will arise whether, in view of the nature and quantity of the preservatives added, it can be considered that the article has been rendered injurious to health, or that the purchaser has been prejudiced, to an extent which would justify the institution of proceedings under section 3 or section 6 of the Sale of Food and Drugs Act, 1875, notwithstanding the declaration made at the time of purchase.

This question is not without difficulty in view of the general objection to the employment of any preservatives in milk referred to above.

As regards formalin and boron preservatives, however, the Board are advised that the presence in milk of formalin to an amount which is ascertained by examination *within three days of collecting the sample* to exceed 1 part in 40,000 (1 part in 100,000 of formic aldehyde) raises a strong presumption that the article has been rendered injurious to health, and that the purchaser has been prejudiced, in the above sense; and also that a similar presumption is raised where boron preservatives are present in milk to an amount exceeding 40 grains of boric acid per gallon.

It appears desirable that the addition of preservatives to skim milk, separated milk, and condensed milk, should be watched and controlled on similar lines.

Additional copies of this circular are enclosed for transmission to the public analyst, and for use by executive officers under the Sale of Food and Drugs Acts. The Circular will be placed on sale and copies can then be obtained from Messrs. Wyman & Sons, Limited, 109, Fetter Lane, Fleet Street, London, E.C., either directly or through any bookseller.

I am, Sir, your obedient Servant,

S. B. PROVIS,

Secretary.

The Town Clerk, *or*
The Clerk to the County Council.

[See also the Public Health (Milk and Cream) Regulations, 1912, *ante*, p. 220.]

CIRCULAR TO MAKERS IN GREAT BRITAIN OF CHURNS FOR THE CARRIAGE OF MILK BY RAIL.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place, London, S.W.,
27th February, 1907.

SIR,—I am directed by the Board of Agriculture and Fisheries to inform you that they are desirous of bringing the following observations under the notice of makers of churns for the carriage of milk by rail.

The Metropolitan Boroughs Councils Association in a report which was forwarded to the Board on the 19th June last, recommended that the use of sealed cans for the transit of milk should be enforced by statute, and at a conference held between the Public Health Committee of Wandsworth and dairymen and keepers of milkshops in that borough on the 17th July last, it was resolved :

> "That the Board of Agriculture be urged to take steps to ensure the carriage of milk in sealed churns."

Both the report and the resolution have received the support of numerous metropolitan borough councils.

Two of the principal dairy farmers' associations have for several years recommended their members to send milk by rail, in sealed churns, to prevent pilfering.

The railway companies do not object to carry milk in sealed churns, provided the tare weight is stamped on the outside of the churn.

The withdrawal of milk from a churn may expose the consignor to risk of prosecution under the Sale of Food and Drugs Acts, for selling milk from which fat has been abstracted ; inasmuch as the cream may have risen before the withdrawal took place, or, as in some instances which have been brought under the notice of the Board, milk may have been stolen and water added to make up the quantity.

In these circumstances, the Board suggest that the following points should be kept in view in connection with the construction of milk churns :

(1) The churn should have the tare weight stamped on the outside.

(2) The lid of the churn should be constructed so as to facilitate sealing.
(3) The churn should be constructed so as to prevent, as far as possible, the removal of milk from the churn while sealed.
(4) The churn should be constructed so as to prevent water being added to the milk in the churn while sealed.
(5) The churn should be constructed so as to prevent dust or dirt from being blown or washed into the churn when the lid is affixed.

I am, Sir,
T. H. ELLIOTT.

ADULTERATION OF CREAM.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place,
London, S.W.,
1*st October*, 1909.

SIR,—I am directed by the Board of Agriculture and Fisheries to send to you the following information as to the adulteration of cream which they think may be of use to the officers of your local authority engaged in the execution of the Sale of Food and Drugs Acts.

A sample of an article apparently intended to increase the weight or bulk of the cream was recently purchased for one of the Board's officers and submitted to the Principal Chemist of the Government Laboratory. The report of the Principal Chemist on this sample is as follows :

" The examination of the sample gives the following results :

Water	83·46 per cent.
Proteins	11·90 „
Lactose	1·55 „
Milk-fat	1·26 „
Mineral matter . . .	1·28 „
Boric acid . . .	·30 „

" The substance would appear to consist of some form of albuminoid matter which has been worked into an emulsion

with milk and water. When received, the substance was thick and pasty, but in the course of two days it became decomposed, and was then of the consistency of thin cream.

"Cream to which this substance has been added is undoubtedly adulterated, and although the material does not appear to give any distinctive reaction, its detection in cream is not difficult if regard is had to the ratio between the non-fatty solids and fat, and particularly to the proportion of proteins in the non-fatty solids."

Two other substances apparently intended to be used for concealing the inferior quality of poor cream have also been recently procured by an officer of the Board and analysed by the Principal Chemist of the Government Laboratory.

One of these articles is described as follows in the report of the Principal Chemist:

"The sample consists of a solution of lime in cane sugar syrup. This substance under various names has been in use for some years, and is said to have a remarkable effect in increasing the thickness of the cream. In ordinary analysis its presence would not be suspected as, if used in the quantities recommended . . . it would increase the ash of the cream only ·04 per cent., and the total solids ·19 per cent. There is, however, no reason why an analysis directed specifically to the detection of cane sugar, and to the estimation of the relative proportion of lime in the ash, should not reveal the presence of this substance. Its use, even in these small quantities, gives a fictitious value to cream."

The other article was of the same character, and is described as follows by the Principal Chemist in his report:

"The sample consists of a solution of lime in cane sugar syrup, and is coloured with annatto colouring matter."

It is impossible to ascertain to what extent or in what localities the vendors of these adulterants may have succeeded in effecting sales to dairymen, and I am to suggest that samples of cream should be taken in the district of your local authority, and that the analyst should direct his attention to the question whether the samples of cream submitted to him contain adulterants of the nature above described.

There is also reason to suppose that gelatin and cornflour are used as adulterants of cream.

The Board will be glad to forward to you additional copies

of this circular for distribution amongst the members of your local authority and the officers concerned on being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

MEMORANDUM AS TO SAMPLING.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
May 1910.

The attention of the Local Government Board has lately been called to the following matters which bear upon the collection of samples under the Sale of Food and Drugs Acts.

SALE OF LARD SUBSTITUTES AS LARD.

In certain districts proceedings have recently been instituted under Section 6 of the Sale of Food and Drugs Act, 1875, and conviction has been obtained, in cases in which the purchaser who asked for lard was supplied with one of the numerous preparations of other fats which resemble lard and can be used as lard substitutes. In the cases referred to no sufficient steps had been taken by the vendor to declare the fact of the substitution to the purchaser.

Although similar practices have been brought to notice from time to time during past years, it is desirable now to direct special attention to them, on account of the increase which has lately taken place in the importation of lard substitutes into this country, and also of the marked difference which at present obtains between the cost of lard and of the substitutes in question.

In collecting samples with a view to the detection of such practices, advantage would probably be gained by arranging that suitable persons should act as agents for the sampling officer in connection with the purchase.

PRESENCE OF WATER IN LARD SUBSTITUTES.

Lard and the ordinary preparations of which lard substitutes are composed consist almost exclusively of fat. In a

recent instance at Liverpool, however, the public analyst reported on a sample of lard substitute which contained no less than 24 per cent. of water, and on proceedings being instituted against the vendor of the sample under Section 6 of the Sale of Food and Drugs Act, 1875, a conviction was obtained. It appears desirable that the extent to which water is present in representative samples of lard substitutes should be ascertained. The Board would be glad of information of the results of any examination which may be made for this purpose, and of any action which is taken in cases where the presence of water in lard substitutes has been reported.

Presence of Paraffin in Lard, Lard Substitutes and Margarine.

Two samples of "cake" margarine, recently collected on importation, were ascertained to contain solid paraffin (melting point 55° C.), in amounts respectively equivalent to 10 and 2·3 per cent. of the margarine. In the County of Lancaster, during 1909, the public analyst reported on several samples of margarine in which a liquid paraffin was present, in amounts between 2 and 7 per cent., and in certain of these cases proceedings were instituted under Section 6 of the Sale of Food and Drugs Act, 1875, and convictions obtained. In the same county (and also in Liverpool), during the previous year, cases were reported by the public analyst in which solid paraffin, in amounts between 2 and 3 per cent., was present in samples which had been purchased as lard. In certain of these cases, also, proceedings were instituted and convictions obtained.

Although the Board have no reason to consider that this form of adulteration of margarine and lard is common, they would be glad to receive information as to the results, positive or negative, of any examination for the presence of paraffin which may be made by the public analyst when samples of these substances are submitted to him. It appears desirable that the institution of proceedings under the Acts should be considered whenever any such adulteration is reported. Paraffin is devoid of any value as food and in some circumstances its presence in food appears liable to be deleterious to health.

It would be convenient to the Board to receive information

on the above matters by means of suitable notes in the public analyst's quarterly reports, or by the transmission to them of a copy of any special report which a local authority may receive on the subjects referred to.

SALE OF MILK REGULATIONS.

HOME OFFICE,
Whitehall,
14*th February*, 1911.

SIR,—I am directed by the Secretary of State to say that several cases of proceedings under the Sale of Food and Drugs Acts in respect of milk have been brought to his notice, in which the court appeared to have been under a misapprehension as to the effect of the Sale of Milk Regulations, 1901, and it has been suggested to him that it may be of use to magistrates to have a brief statement of the law on the subject.

Under the Regulations, a copy of which is enclosed, a presumption of adulteration or abstraction is raised by a deficiency of milk-fat or of other solids, but if it can be proved that the milk was sold as it came from the cow this presumption is rebutted. It should therefore be observed that the sale of milk containing less than 3 per cent. of milk-fat or less than 8·5 per cent. of other milk-solids does not necessarily constitute an offence : the proof of the deficiency throws on the defendant the *onus* of showing by direct and positive evidence that the milk was sold as it came from the cow.

Milk, though sold as it came from the cow, may, nevertheless, be so seriously deficient in milk-fat as not to be of the quality demanded, in which event it appears from the decisions given by the High Court in the cases of *Smithies* v. *Bridge*, [1902] 2 K. B. 13, and *Wolfenden* v. *McCulloch* (1905), 69 J. P. 228 (*a*), that the vendor may be charged and convicted under Section 6 of the Sale of Food and Drugs Act, 1875.

I am, Sir, your obedient Servant,
EDWARD TROUP.

(*a*) But see, now, the more recent cases quoted on pp. 26, 27, *ante*.

INADEQUATE PENALTIES.

Local Government Board,
Whitehall, S.W.,
18*th March*, 1912.

Sale of Food and Drugs Acts: Penalties.

Sir,—I am directed by the Local Government Board to inform you that the Secretary of State for the Home Department has recently drawn the attention of Justices of the Peace to the Home Office circular of the 24th July, 1902, on the subject of the inadequate penalties which are often imposed by them for breaches of the Sale of Food and Drugs Acts.

The Board have received many representations on the same subject, and they think it desirable that local authorities concerned in the enforcement of the Acts should be acquainted with the Home Office circulars, a copy of which is enclosed, for use in cases in which it is desirable to press for heavy penalties.

It will be observed that the second paragraph of the circular of 24th July, 1902, refers to particulars of the number of small fines inflicted in respect of offences under the Acts committed during the year 1900. Statistics in the Board's possession for the following ten years show that the proportion of penalties not exceeding 10*s*. still remains very high, the proportion which such fines bear to the total number, which was 28½ per cent. in 1900, being nearly 28 per cent. in 1910.

I am, Sir, your obedient Servant,
F. J. Willis,
Assistant Secretary.

Home Office,
Whitehall,
10*th January*, 1912.

Sir,—I am directed by the Secretary of State to say that, in consequence of representations recently received from local authorities charged with the enforcement of the provisions of the above Acts, he thinks it right to draw attention to the Home Office circular of the 24th July, 1902, which

will be found reprinted overleaf. Later figures obtained by the Local Government Board in connection with this subject demonstrate the large proportion of cases still occurring under these Acts in which penalties are imposed of such a small amount as to suggest that the offence is regarded as being of an altogether trivial character. The Secretary of State will therefore be glad if you will bring the circular to the notice of your justices with a view to securing careful consideration of the adequacy of the penalties which they may decide to impose in cases under the Sale of Food and Drugs Acts.

I am, Sir, your obedient Servant,
EDWARD TROUP.

HOME OFFICE,
24*th July*, 1902.

SIR,—I am directed by the Secretary of State to inform you that a local authority charged with the enforcement of the provisions of the Sale of Food and Drugs Acts, has recently called his attention to the inadequate penalties imposed for breaches of these Statutes, and has represented that the efforts made to suppress the abuses against which the Acts are aimed are thereby greatly impeded. This representation is by no means the first of the kind which has been made to the Home Office, and the Secretary of State is informed by the Local Government Board that they have from time to time received many similar complaints from the local authorities entrusted with the administration of the Acts. The matter was considered by the Select Committee of the House of Commons which inquired into the subject of the Adulteration of Food Products in 1896, and their Report contains the following passage :

> " There has been a general agreement among the witnesses who have given evidence in reference to this subject that the penalties imposed in respect of offences under the Acts are for the most part trifling and quite insufficient to serve as deterrents. Your committee have been told that fines such as 10*s*. with 12*s*. costs are frequently inflicted."

Notwithstanding the attention, however, which was then

drawn to the matter, the Local Government Board inform the Secretary of State that in the year 1900, out of 2,673 fines imposed by magistrates under the Sale of Food and Drugs Acts, no less than 764 or over 28½ per cent. were of 10*s.* or less, while 193 penalties were under 5*s.*, and 118 were 1*s.* or even less than that sum.

It is unnecessary to point out the injurious consequences of the adulteration of articles of food or the large and sometimes enormous profits that accrue from the practice; and it is obvious that when the penalty on detection is trifling, it not only fails to be deterrent, but may even spread the mischievous impression that the offence is venial. The Secretary of State does not wish to be understood as suggesting that these considerations are lost sight of by your Bench, but the figures appear to be sufficient to show that the state of things to which the Parliamentary Committee called attention has not yet been set right; and he will be glad if you will bring the matter to the notice of the justices, in order that, as occasion arises, they may give special consideration to the question whether the penalties imposed in the cases that come before them are such as are likely to deter the offenders from repeating, and other persons from committing, the offence.

I am, Sir, your obedient Servant,
KENELM E. DIGBY.

MILK AND CREAM REGULATIONS.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
6th August, 1912.

SIR,—I am directed by the Local Government Board to advert to the Public Health (Regulations as to Food) Act, 1907 (7 Edw. 7, c. 32), under which the Board are empowered to make regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption. In connection with the powers thus conferred the Board have for some time had under

consideration and inquiry the danger to health which may be entailed by the addition of preservatives and other foreign substances to milk and cream and the importance of controlling such additions, and they have now made Regulations under that Act entitled "The Public Health (Milk and Cream) Regulations, 1912." Copies of an Order containing these Regulations are enclosed.

In making these Regulations due regard has been had to representations which the Board have received from local authorities under the Sale of Food and Drugs Acts, from representatives of the trades affected and from others concerned.

The Regulations are designed to secure that no preservative shall be added to milk, or to cream containing less than 35 per cent. by weight of milk fat, at any stage from the place of production to that of delivery to the purchaser. In the case of cream containing over 35 per cent. of milk fat, the addition of boric acid, borax or a mixture of these preservative substances, or of hydrogen peroxide, is not prohibited by the Regulations, but is subject to a system of declaration which is required to be followed by all persons dealing with such cream for the purpose of sale for human consumption. By this system (Part II. of the Regulations) it is intended that preserved cream as an article of commerce shall in all stages be differentiated from cream to which no preservative has been added. Further, Article IV. (a) prohibits the addition of any thickening substance to cream or preserved cream.

It will be seen that except as regards Part III. the duty of administering the Regulations has been placed upon those in England and Wales who are local authorities under the Sale of Food and Drugs Acts.

Existing arrangements for the collection and examination of milk samples under the Sale of Food and Drugs Acts can readily be extended so as to enable the council to receive such reports from the public analyst as are requisite. Arrangements will be required for the periodical examination of samples of cream for the purpose of ascertaining whether the requirements of the Order are being duly complied with.

In the case of any contravention of the Regulations steps should be taken to ascertain the circumstances in which the

default has arisen with a view to any necessary action. Article VI. requires that before the local authority institutes proceedings against any person for contravention of any of the Regulations in Part II. of the Order, the local authority shall afford him an opportunity of furnishing an explanation and shall consider such explanation and all the circumstances of the case. It should be observed that the proceedings here in question are those authorised by the Public Health (Regulations as to Food) Act, 1907, and the enactments referred to in the Notice at the foot of the Order.

It will be desirable that the medical officer of health should be instructed to exercise general supervision over the action taken in pursuance of these Regulations, and that the officer of the council who directs sampling under the Sale of Food and Drugs Acts should be instructed to confer with the medical officer of health and with the public analyst as to the details of procedure necessary to secure the observance of the Regulations in the area over which the council has supervision.

The Regulations will as regards their main provisions take effect on and after October 1st next, and as regards Article V. (1) on January 1st, 1913. The Board are anxious to secure uniformity of the administration of the Regulations and will be glad to have their attention drawn to any cases of difficulty which may hereafter arise.

Copies of the Regulations and of this Circular are enclosed for transmission to the medical officer of health and public analyst.

The Regulations and this Circular will be placed on sale, so that copies may shortly be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.

I am Sir, your obedient Servant,

H. C. MONRO,
Secretary.

[NOTE.—See also Circular Letters of 27th October, 1913, *post*, p. 291, and of 9th February, 1917, *post* p. 295.]

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place, London, S.W.,
20th August, 1912.

SIR,—I am directed by the Board of Agriculture and Fisheries to enclose herewith a copy of the Sale of Milk Regulations, 1912.

These Regulations amend the Sale of Milk Regulations, 1901, in so far as they relate to skimmed or separated milk, and replace the limit of 9 per cent. of total milk-solids, on which under Article 3 of those Regulations a presumption that the milk is not genuine is based, by a limit of 8·7 per cent. of milk-solids other than milk-fat.

Representations have been received from time to time from local authorities of districts where there is a trade in skimmed and separated milk that considerable practical difficulties arise in instituting proceedings in cases in which water has been added to skimmed milk, but, owing to the fact that the milk has been imperfectly skimmed, the total solids have not fallen below 9 per cent. Thus a sample containing 1·5 per cent. of fat and 7·5 per cent. of milk-solids other than milk-fat would probably contain over 12 per cent. of added water, but the total solids are up to the limit of 9 per cent. The present Regulations are intended to obviate these difficulties and to facilitate the prevention of the adulteration of skimmed milk with water.

The fixing of the percentage at 8·7 may result in some hardship in cases where the milk is imperfectly skimmed. Thus, if milk containing 3 per cent. of milk-fat and 8·5 per cent. of milk-solids other than milk-fat is imperfectly skimmed so that 1·5 per cent. of milk-fat remains, the proportion of milk solids other than milk-fat will rise only to 8·63 per cent., and the Board would suggest that this point should be taken into account by your local authority in considering the question whether they should institute proceedings on the presumption of adulteration based on the Regulations in cases where the deficiency of milk-solids other than milk-fat is slight and the skimmed milk contains a considerable proportion of milk-fat.

I am to enclose duplicate copies of this Circular and of the Regulations for transmission to the public analyst, and to say that the Board will be glad to supply further copies of

the Circular for distribution amongst the members of your local authority and the officers concerned in the administration of the Acts on being informed of the number you require.

I am, Sir, your obedient Servant,
T. H. ELLIOTT,
Secretary.

The Clerk to the Local Authority.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
27*th October*, 1913.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the question of the manner in which the details of action taken under the Public Health (Milk and Cream) Regulations, 1912, can be most conveniently reported.

It will be remembered that by these Regulations a definite restriction has been placed on the use of preservatives by producers, retailers and others concerned in the milk and cream trade; no preservative is to be added to milk in any case, and no preservative is to be added to cream which is sold as cream. The Regulations, however, do not prohibit the sale of cream containing boric acid, borax, or a mixture of these preservative substances, or hydrogen peroxide, provided:—

(1) That it is sold, not as cream, but as preserved cream and

(2) That the vessel in which it is sold bears a declaration, in the prescribed form, showing the amount and nature of the particular preservative added.

The addition to cream of any other preservative substances than those mentioned is prohibited.

The object of the Regulations in regard to cream is to secure that preserved cream sold in compliance with the Regulations shall be distinguished at all stages of sale from cream to which no preservative has been added; this distinction is important in the interests of the public generally, and particularly in the interests of infants and invalids.

In their circular letter of the 6th August, 1912, the Board suggested that the medical officer of health should be instructed to exercise general supervision over the action taken in pursuance of the Regulations, and that the medical officer of health, the officer who directs sampling under the Sale of Food and Drugs Acts, and the analyst, should confer as to the details of the procedure necessary to secure observance of the Regulations.

In amplification of that circular, I am to state that the Board consider that the council should look to their medical officer of health for reports on the administration of the Regulations. For the present it will suffice if a brief statement on the subject is included in the annual report of this officer.

In order to secure completeness and uniformity in this statement, and with a view to saving unnecessary correspondence, the Board think that there would be advantage if the statement were drawn up under the headings shown in the Appendix below, and they would be glad if, for purposes of tabulation, a copy could be forwarded to the Board shortly after the close of the year. If the information necessary for the preparation of this statement is not in the possession of the medical officer of health, the Board will be obliged if the council will give directions for him to be supplied with it.

It will no doubt generally be convenient that analyses which are made for the purpose of these Regulations should be made by the public analyst; and the Board recommend that this course should be adopted, special arrangements for this work being made where necessary. In any case it is essential that the medical officer of health should obtain information as to the results of the analysis.

The Board understand that it is now customary for public analysts in their reports on samples of milk submitted to them under the Sale of Food and Drugs Acts to state the results of examinations made to detect the presence of preservatives. Where this is done, the analyst's certificate will bring to notice cases where preservatives have been added to milk and the council can then take the action in the matter which the Regulations require.

In the case of cream and preserved cream the analyst who receives a sample taken with a view to checking the

observance of the Regulations should be informed precisely of the reason for which it has been taken, and the particular fact or facts which it is desired to ascertain by analysis. On one occasion, for example, the only analytical determination required may be the proportion of milk-fat in cream; on another, whether a preservative is present; or on a third, whether the statement on the label as to the nature and amount of added preservative is borne out by analysis. By adjustment of procedure in this way, and by consultations between the medical officer of health and the analyst, it is anticipated that much unnecessary analytical work can be avoided.

The Board would take this opportunity to remind the council that it is the duty of the local authorities specified in the Regulations to see that they are enforced by the administrative procedure authorised under the Regulations, and, should necessity arise, by the institution of proceedings under the public health enactments referred to in the note appended to the Regulations.

For administrative convenience the local authorities specified are those which also administer the Sale of Food and Drugs Acts, and the provisions of the Sale of Food and Drugs Act, 1875, relating to the taking of samples, has been applied to samples taken for the purpose of the Regulations. But the action taken under the Regulations is in other respects independent of the Sale of Food and Drugs Acts and does not affect the action which may be taken under those Acts.

While therefore it may be open to the council on consideration of the report of a public analyst on a sample of milk or cream to take action either under the Sale of Food and Drugs Acts, or under the Regulations, the Board consider that it is generally desirable that in cases in which it appears that the Regulations have been infringed such action as may be necessary should be taken under the Regulations rather than under the Sale of Food and Drugs Acts.

I am to request that the council will take this circular into consideration with a view to making further arrangements, if any are necessary, so that the administration of these Regulations may be carried out and reported upon on the lines above indicated.

I am to add that, as stated in their circular of the

6th August, 1912, the Board are anxious to secure uniformity in the administration of the Regulations, and if difficulties are actually experienced by local authorities in the matter, the Board will be glad to be informed of the nature of the difficulties.

Copies of this circular are enclosed for transmission to the medical officer of health and public analyst. It will be placed on sale, so that additional copies may shortly be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Ltd., Fetter Lane, London, E.C.

I am, Sir, your obedient Servant,

H. C. MONRO,
Secretary.

APPENDIX.

HEADINGS OF REPORT OF ADMINISTRATION IN CONNECTION WITH THE PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912.

[*This form is now superseded by the form on pp.* 301, 302.]

Report for the year ended 31st December, 19 .

1. *Milk ; and Cream not sold as Preserved Cream.*

——	(a) Number of samples examined for the presence of a preservative.	(b) Number in which a preservative was reported to be present.
Milk . .		
Cream .		

Nature of preservative in each case in column (b) and action taken under the Regulations in regard to it.

2. *Cream sold as Preserved Cream.*

(a) Instances in which samples have been submitted for analysis to ascertain if the statements on the label as to preservatives were correct.

(i.) Correct statements made . .

(ii.) Statements incorrect. . .

Total . . .

(b) Determinations made of milk-fat in cream sold as preserved cream.
(i.) Above 35 per cent. . . .
(ii.) Below 35 per cent. . . .

Total . . .

(c) Instances where (apart from analysis) the requirements as to labelling or declaration of preserved cream in Article V. (1) and the proviso in Article V. (2) of the Regulations have not been observed.
(d) Particulars of each case in which the Regulations have not been complied with, and action taken.

3. *Thickening substances.*—Any evidence of their addition to cream or to preserved cream. Action taken where found.

4. *Other observations, if any.*

PUBLIC HEALTH (REGULATIONS AS TO FOOD) ACT, 1907.

AMENDING REGULATIONS WITH RESPECT TO CREAM.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
9th February, 1917.

SIR,—I am directed by the President of the Local Government Board to transmit to you the enclosed copies of an Order which has been made amending the Public Health (Milk and Cream) Regulations, 1912.

Numerous representations have been made to this Department on the subject of boric acid in cream. Some of these representations have urged that the use of preservatives in cream should be wholly prohibited; others have urged that it would be impracticable to carry on the present trade in jugged cream unless some small amount of preservative is added, and the Department has been asked to lay down a maximum limit.

The question is one of some difficulty, and it has been

decided to appoint a small expert Committee for the purpose of enquiring further in regard to it.

In consequence of the War, the appointment of this Committee has necessarily been postponed, and as an interim measure, Lord Rhondda has decided to issue the Order, copies of which are enclosed. This Order prescribes that not more than 0·4 per cent. of boric acid shall be added to cream, that cream to which boric acid has been added shall be sold as preserved cream, and that there shall be affixed to the receptacle containing such cream a label stating that cream containing boric acid is unsuitable for infants and invalids.

The enquiry which it is proposed to institute may show that the limit should be less than 0·4 per cent., which is the maximum fixed by the present amending Regulations. Attention is drawn to this point in order that dealers in this article may make every effort to reduce the preservative to the smallest possible amount, or even to dispense with its use entirely. By adopting this course the trade will find less difficulty in complying with any further restrictions which may be made as a result of the findings of the Committee referred to.

In temporarily forbidding a greater addition of boric acid than 0·4 per cent., the Department must not be regarded as deciding the question proposed for enquiry as to whether this amount of boric acid is or is not injurious to the consumer; but pending the result of the proposed enquiry, Lord Rhondda would deprecate any prosecutions being instituted in respect of the sale of preserved cream which complies with the Regulations as now amended.

The Order comes into operation on the 2nd of April next.

Copies of the Order and of this Circular are also enclosed for transmission to the Medical Officer of Health and Public Analyst.

The Order and this Circular will be placed on sale, and copies may shortly be obtained, either directly or through any bookseller, from His Majesty's Stationery Office, Imperial House, Kingsway, London, W.C.

I am, Sir, your obedient Servant,

H. C. MONRO,
Secretary.

The Town Clerk, *or*
The Clerk to the County Council.

MEMORANDUM with regard to the Reports of Public Analysts under the Sale of Food and Drugs Acts, and the Reports of Medical Officers of Health under the Public Health (Milk and Cream) Regulations, 1912 and 1917.

1. Analysts' Reports.

Section 19 of the Sale of Food and Drugs Act, 1875, requires that a certified copy of each quarterly report of the public analyst shall be transmitted to the Ministry of Health. It is important that each report should be received by the Ministry as soon as it has been submitted to the local authority. In order to facilitate the work of the Department it is desirable that the information referred to in the following paragraphs should be given with each quarterly report.

2. Action taken by Local Authorities.

The Ministry desire to receive information respecting the action taken by local authorities in regard to each sample not reported as genuine by the public analyst, showing what legal proceedings have been instituted, the result of such proceedings, the respective amounts of the fine inflicted and the costs paid, the fines and costs being given separately in each case. Detailed accounts should be forwarded of any prosecutions of an exceptional character, especially in connection with the adulteration of milk. Where prosecution has not been considered advisable the Ministry should be furnished with a brief statement of the circumstances which have determined the decision, and the precise action which has been taken by the authority. In all cases the information should be given in such a form as to ensure the identification of the particular sample to which the information relates.

Where proceedings in respect of offences committed in any quarter are pending at the time of sending in the report, the necessary information as to the result of such proceeding should be transmitted to the Ministry as early as practicable.

3. Action in regard to Offences other than Adulteration and under Acts other than the Sale of Food and Drugs Acts.

The Ministry desire to be furnished with particulars of offences other than adulteration, *e.g.*, breaches of the Margarine Act, 1887, and the Butter and Margarine Act, 1907, obstructing officers in the discharge of their duty, refusing to sell, &c. As regards such offences, information as to the action taken should be given on the same lines as that asked for above with regard to adulterated samples.

The Ministry would also be glad to be informed of all cases in which samples have been submitted to the public analyst, or any other action has been taken with regard to the quality of food, otherwise than under the Sale of Food and Drugs Acts (*e.g.*, under the Orders of the Food Controller).

4. "Appeal to Cow" Samples.

In many districts, when the analyst reports against a sample of milk, a further sample is taken direct from the cow, with a view to comparison with the former sample. These appeal samples are not included in the tables prepared in the Department, and it would therefore be convenient if they were in all cases excluded from the main tabular statement. It is, however, desired to have information with each quarterly report as to the number of such samples analysed during the quarter, and the number found to be below standard.

It may be observed that when the Milk and Dairies (Consolidation) Act, 1915, comes into force, "appeal to cow" samples taken in accordance with the requirements of the Act will be formal samples. Such samples should, however, be distinguished in the reports.

5. Preservatives.

Having regard to the extent to which preservatives are added to food, the Ministry consider that analysts should examine for preservatives all samples which their experience leads them to believe may contain preservatives, and should state the result in their quarterly reports. Wherever possible, the amount of the preservative should be given.

6. Informal or Test Samples.

Samples collected without the formalities prescribed by the Sale of Food and Drugs Acts and analysed by the public analyst should be included in the quarterly reports, and whether they are genuine or adulterated, should be clearly distinguished as informally taken. If during the quarter any such samples have been examined by the public analyst and have not been included in his report, a statement regarding their nature and the result of their examination should be furnished.

In some districts it is the practice to take informal samples for the purpose of preliminary investigation, and to submit such samples to examination, by rough sorting methods only, by the public analyst or by some other person. Where this practice is followed, the Ministry should be furnished with a list of the samples so dealt with, and with a short statement of the procedure adopted.

The Ministry also wish to receive observations by the public analyst, or by the medical officer of health or other officer charged with the direction of sampling under the Acts, regarding the practice of examining informal samples, and the use made by the local authority of the information thus obtained.

7. Samples sent to Analyst by Private Purchasers.

Samples sent in by the general public under section 12 of the Act of 1875 should be separately indicated in the analysts' reports as " private samples."

8. Samples sent to County Analysts by Sanitary Authorities.

In some counties it is the practice of sanitary authorities who are not themselves empowered to appoint public analysts to direct their officers to purchase samples of food and drugs, and submit them to the analyst for the county. All such samples should be included in the analysts' quarterly reports, and there should be an indication, in the reports, of the sanitary authority from which the samples have been received. It would assist such sanitary authorities if they could be supplied by the County Councils with information

as to the work done in their districts by officers of the County Council.

9. Annual or Special Reports.

The Ministry should be furnished with copies of any annual or special reports made by public analysts which deal with the general working and administration of the Sale of Food and Drugs Acts in their districts, or which contain the results of special investigations as to particular food materials carried out on behalf of the local authority. The Ministry should also be supplied with a copy of any reports on like matters which may be made by other officers of the authority. They would be glad to receive such copies as soon as the reports have been submitted to the authority.

10. Composition of Milk Samples.

In many instances information is given by public analysts showing the composition of each sample of milk analysed. This information is valuable, and where it is available the Ministry desire to receive a copy.

11. Remuneration of Analyst.

Section 19 of the Act of 1875, requires the analyst to state in his quarterly report the sum paid in respect of each analysis. The required information may be given either at the beginning or at the end of the report, and it should include a note of the sum charged in respect of any analysis made by the analyst in his public capacity for private individuals or bodies. Where the analyst is paid by salary, the amount should be stated, and in cases in which, in addition to the fee for each sample analysed, the analyst receives a retaining fee, the amount of such fee should be indicated.

12. Public Health (Milk and Cream) Regulations, 1912 and 1917.

The Ministry would be glad if local authorities would instruct their medical officer of health to report on the administration of the above-mentioned Regulations, and it would be convenient if the report were drawn up under the following headings :—

REPORT FOR THE YEAR ENDED 31ST DECEMBER, 19 .

1. *Milk ; and Cream not sold as Preserved Cream.*

——	(a) Number of samples examined for the presence of a preservative.	(b) Number in which preservative was reported to be present, and percentage of preservative found in each sample.
Milk . .		
Cream .		

Nature of preservative in each case in column (b) and action taken under the Regulations in regard to it.

2. *Cream sold as Preserved Cream.*

(a) Instances in which samples have been submitted for analysis to ascertain if the statements on the label as to preservatives were correct.

(i.) Correct statements made . .

(ii.) Statements incorrect. . .

Total . . .

(iii.) Percentage of preservative found in each sample.
Percentage stated on Statutory label.

(b) Determinations made of milk fat in cream sold as preserved cream.

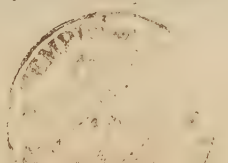
(i.) Above 35 per cent. . . .

(ii.) Below 35 per cent. . . .

Total . . .

(c) Instances where (apart from analysis) the requirements as to labelling or declaration of preserved cream in Article V. (1) and the proviso in Article V. (2) of the Regulations have not been observed.

(d) Particulars of each case in which the Regulations have not been complied with, and action taken.



3. *Thickening substances.*—Any evidence of their addition to cream or to preserved cream. Action taken where found.

4. *Other observations, if any.*

If samples of cream are taken for the purpose of the Sale of Food and Drugs Acts the analyst should include the results of his examination of the samples in his usual quarterly report, but if they are obtained for the purposes of the Regulations, he should make separate reports on the analyses of the samples and the authority should forward copies of such reports to the medical officer of health to enable him to prepare his report.

The Ministry would be glad if for purposes of tabulation, the authority would instruct the medical officer of health to transmit to the Ministry in the month of January a copy of his report on the administration of the Regulations.

MINISTRY OF HEALTH,
WHITEHALL, LONDON, S.W. 1.
January, 1921.

SALE OF FOOD AND DRUGS ACTS. PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912 AND 1917.

MINISTRY OF HEALTH,
Whitehall, S.W. 1.
7th January, 1921.

SIR,—I am directed by the Minister of Health to request that a copy of the report of the public analyst for the fourth quarter of 1920 may be forwarded to the Ministry during the present month.

Many Local Authorities failed to furnish the Ministry with a report by the medical officer of health on the administration during 1919 of the Public Health (Milk and Cream) Regulations. The Ministry attach considerable importance to the effective administration of these Regulations and they will be glad to receive this month a copy of the medical officer of health's report on the subject for 1920.

Four copies of a memorandum with regard to the reports of public analysts under the Sale of Food and Drugs Acts, and of medical officers of health under the Milk and Cream

Regulations are enclosed, and I am to request that copies may be transmitted to the public analyst, the medical officer of health and any other officer who may be charged with the direction of sampling under the Acts or Regulations. Further copies, if required, can be obtained on application.

I am, Sir, your obedient Servant,
L. V. BROCK,
Assistant Secretary.

The Clerk of the County Council, *or*
The Town Clerk.

THE SALE OF FOOD ORDER, 1921, AND THE LOCAL AUTHORITIES (FOOD) ORDER, 1921.

[*This letter is now obsolete.*]

MINISTRY OF HEALTH,
Whitehall, London, S.W. 1.
17*th August*, 1921.

SIR,—I am directed by the Minister of Health to refer to his Circular Letter of the 29th March, 1921 (Circular 191), and to transmit, for the information of the Council, copies of two further Orders by which functions recently exercised by the Food Controller and the Board of Trade are transferred to local authorities.

Under the Sale of Food Order, 1921, local authorities for the purposes of the Sale of Food and Drugs Acts are invested with the power of enforcing the requirements of the Order as to the labelling of imported produce, the composition of jam and marmalade, and the composition of dripping, margarine, and other edible fats. The Minister is aware that in the past local authorities have occasionally experienced difficulties in dealing with cases of excessive water in dripping, lard substitutes, &c., and it is hoped that the present Order by specifying a definite maximum percentage will assist in the removal of these difficulties. Similarly the provisions of the Order prescribing a standard of composition for jam and marmalade will be found useful.

The enforcement of the provisions hitherto in force with regard to the weight of bread and tea is now entrusted to

the local authorities for the purposes of the Weights and Measures Acts.

By the Board of Trade's Order of the 24th June last, of which copies have already been sent to the local authorities concerned, the definition of milk in the Milk (England and Wales) Order, 1921, was extended so as to include skimmed and separated milk (as in the Milk Order, 1920). The principal effect of this extension is to prohibit the addition of colouring matter to such milk.

The Local Authorities (Food) Order, 1921, made by the Minister of Health, contains provisions conferring on local authorities and their officers the necessary powers for the due discharge of the functions entrusted to them, and the opportunity has also been taken formally to revoke certain Orders of the Local Government Board, or of the Minister of Health, which had ceased to be effective by reason of the revocation of the Food Controller's Orders to which they related.

I am to refer to Circular 191, dated the 29th March, 1921, and to suggest that the local authority should take steps to ascertain whether milk sellers who are retailing milk under the special designations of Grade A (Certified) Milk or Grade A Milk hold a licence in that behalf. If any instance is discovered in which a person selling milk under these special designations is unable to produce the necessary licence it would be desirable for the local authority, before taking action in the matter under the Local Authorities (Milk) Order, 1921, to enquire of the Ministry whether a licence has or has not been issued to the retailer in question.

This Circular, and the Orders to which it relates, have been placed on sale, and further copies may be obtained, either directly or through any bookseller, from H.M. Stationery Office at the following addresses :—Imperial House, Kingsway, London, W.C. 2; 28, Abingdon Street, London, S.W. 1; 37, Peter Street, Manchester; and 1, St. Andrew's Crescent, Cardiff.

I am, Sir, your obedient Servant,

L. V. BROCK,

Assistant Secretary.

To the Clerk of the Council, *or*
The Town Clerk.

MINISTRY OF HEALTH,
Whitehall, S.W. 1,
20th December, 1921.

SIR,—1. I am directed by the Minister of Health to request that a copy of the report of the Public Analyst for the fourth quarter of 1921, and a copy of a report by the Medical Officer of Health on the administration of the Public Health (Milk and Cream) Regulations during 1921, may be forwarded to the Ministry during the month of January. The memorandum (36/Foods) as to the nature of the reports desired is not being reprinted this year, and it is requested that the lines indicated in the copies circulated with the Ministry's Circular Letter No. 162 of the 7th January, 1921, may continue to be followed.

2. His Majesty's Stationery Office have recently published a pamphlet containing a reprint of the section of the Ministry's Annual Report for 1920–1921, relating to the Administration of the Sale of Food and Drugs Acts, together with certain additional tables, somewhat on the lines of a pamphlet which used to be issued annually by the Local Government Board. It is regretted that no free distribution can be made of this pamphlet, but it has been placed on sale and copies may be obtained in the ordinary way from His Majesty's Stationery Office either directly or through any bookseller. (Price, 1*s.* 6*d.*) If the demand for copies is sufficient to justify such a course, it is hoped in future to produce a corresponding pamphlet about the middle of each year, as soon as may be after the publication of the Annual Report.

3. I am to draw attention to the provisions of the Licensing Act, 1921. Section 10 of that Act repeals section 6 of the Sale of Food and Drugs Act, 1879, and provides that "in determining whether an offence has been committed under the enactments relating to the sale of food and drugs by selling to the prejudice of the purchaser, whisky, brandy, rum or gin not adulterated otherwise than by any admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than thirty-five degrees under proof." This section thus continues in a permanent form applying to the whole country a provision which was contained in the last sets of Orders of the Central Control

Board (Liquor Traffic), and was referred to in the Ministry's Circular Letter 207 of the 20th May, 1921. These Orders have now ceased to have effect.

4. Another small amendment of the Sale of Food and Drugs Acts is contained in section 23 of the Finance Act, 1921, which enacts that where under any of the provisions of those Acts as amended by the Excise Transfer Order, 1909, any article of food or drug is to be sent to the Commissioners of Customs and Excise for analysis " the article of food or drug shall instead of being so sent, be sent to the Principal Government Chemist at the Government Laboratory and the said Chemist shall make an analysis and give a certificate to the justices or court of the result of the analysis." As the local authority are aware, the analysis of appeal samples under the Acts was formerly undertaken by the Commissioners of Inland Revenue, and later by the Government Chemist for the Commissioners of Customs and Excise, and the new provision merely recognises the Chemist as an independent authority.

5. The attention of Town Councils administering the Acts should also be drawn to the Public Health (Officers) Act, 1921, which comes into operation on the 1st April, 1922. Under subsection (2) of section 2 of that Act an urban sanitary authority is empowered to appoint two or more sanitary inspectors, and subsection (1) of section 3 provides that " the expression ' sanitary inspector ' includes an inspector of nuisances appointed under the Public Health Act, 1875, and an inspector of nuisances shall henceforth be designated a sanitary inspector." One effect of these provisions will be that on and after the 1st April, 1922, every sanitary inspector will have the powers now possessed by an inspector of nuisances, of procuring samples for analysis under the Sale of Food and Drugs Acts.

6. I am further to refer to the Sale of Food Order made by the Board of Trade under the Ministry of Food (Continuance) Act, 1920, and enclosed with the Ministry's Circular Letter No. 225 of the 17th August last. The Board of Trade have now issued an order amending the Sale of Food Order in certain respects and in particular revoking Parts IV. and V. (Jams and Fats). Copies of the amending Order (which will come into operation on the 2nd January, 1922) will be forwarded to the Local Authority as soon as they are

available. It will be observed that the only Part of the Order now entrusted to Sale of Food and Drugs Authorities as such is Part III. (Labelling of Imported Produce). It is, however, possible that certain of the provisions of Part V. (Fats) even after revocation may prove to be useful for the purposes of the Sale of Food and Drugs Acts as indicating the standard of composition generally recognised as the minimum of purity for the article in question, those provisions having been originally settled after consultation with the representatives of the trades concerned.

7. The Milk Orders made by the Board of Trade under the Act of 1920 and referred to in the Ministry's Circular Letters, Nos. 191 and 225 of the 29th March and the 17th August last, still remain in force. It is to be observed, however, that if they are not previously revoked they will lapse on the 1st September, 1922, being the date of expiry of the powers of the Food Controller under the Act of 1920.

I am, Sir, your obedient Servant,
L. V. BROCK,
Assistant Secretary.

The Clerk of the Council, or
The Town Clerk.

MILK AND DAIRIES (AMENDMENT) ACT, 1922.

MINISTRY OF HEALTH,
Whitehall, S.W.,
28th August, 1922.

SIR,—I am directed by the Minister of Health to draw the attention of the Council to the Milk and Dairies (Amendment) Act, 1922, the provisions of which, except section 3, will come into operation on the 1st September, 1922.

SECTION 1 of the Act provides for the postponement of the Milk and Dairies (Consolidation) Act, 1915, until the 1st September, 1925, except in so far as that Act repeals the Act of 1914 and the Postponement Act of 1915.

SECTION 2 empowers a Local Authority under certain conditions to refuse to register a retail purveyor of milk, or to remove such a person from the register.

In considering the effect of this section, reference should first be made to Article 6 of the Dairies, Cowsheds and Milkshops Order of 1885 and to subsection (3) of the present section.

The Order in question requires every Sanitary Authority to keep a register of persons from time to time carrying on the trade of cowkeepers, dairymen or purveyors of milk, and provides that a person may not carry on the trade unless he is registered. This Order required the Authority to register every person carrying on the trade and gave them no power to refuse to register any person or to remove him from the register.

Section 2 (3) of the new Act provides that the Order is to have effect so as to require two registers to be kept, the one being restricted to retail purveyors and the other containing all other persons registered under the Order (*i.e.*, wholesale traders and producers who do not sell milk by retail); and section 2 (1) empowers the Local Authority to refuse to enter any person on the first of these registers or to remove him from that register if they are satisfied that the public health is or is likely to be endangered by any act or default of his in relation to the quality, storage or distribution of milk. It is to be observed that the act or default on which action may be taken is not necessarily one which is an offence against any statute, order or regulation, but it would no doubt be advisable in taking action to note whether any specific offence has been committed.

The course which will be taken in removing a retailer from the register will generally be as follows :—

(1) A report will be presented by the Medical Officer of Health or the Sanitary Inspector drawing attention to any act or default on the part of the retailer and showing in what respect the public health is or is likely to be endangered thereby.

(2) The Authority will then serve a notice on the retailer setting out the reasons (which will generally be those given in the report referred to above) why it is proposed to remove him from the register and requiring him to appear before them to show cause to the contrary. At least seven days' notice must be given of the time of hearing.

(3) If the Authority are not satisfied with the

explanation given they may decide to remove the retailer from the register and they will notify him of that decision.

(4) The retailer may within 21 days appeal to a Court of Summary Jurisdiction.

(5) Either the retailer or the Local Authority may appeal further to a Court of Quarter Sessions.

Provision is made for the removal not to take effect pending appeal.

The procedure in the case of a proposed refusal to register is similar, and in that case the provisions of the Order which prohibit a person from carrying on the trade of a dairyman unless he is registered are not to take effect until the appeal is finally determined.

Section 2 (2) empowers the Court before whom any retailer is convicted of an offence relating to milk or dairies, in addition to any other penalty, to remove him from the register for such period as the Court may think fit.

It will be observed that in any case the removal from the register may be absolute or in respect of specified premises; this will enable the Authority or the Court to distinguish between cases in which the defect is one of general methods and those in which it has relation only to the suitability of particular premises or the methods practised thereat.

SECTION 3 continues, with modifications, the provisions as to the grading of milk which are at present contained in Orders made by the Food Controller and this Department under the Ministry of Food (Continuance) Act, 1920. These Orders are continued in force until the 1st January next, when the provisions of Section 3 will come into operation.

The section provides that milk may not be sold as "Certified," "Grade A," "Pasteurised," or under any other prescribed designation, except in accordance with a licence granted by the Minister or with his authority. The conditions governing the use of these designations will be laid down in an Order and will include conditions as to the payment of fees for the licences.

It is contemplated that the conditions as to Certified milk will be substantially the same as those at present applying to Grade A (Certified) milk, and that the licences for this Grade will continue to be issued directly by the Department.

In view of the fact that it is necessary at times for licensees

to obtain substantial stocks of printed bottle caps, advertisements, and other notices, no objection will be offered by the Department if any licensee finds it convenient to adopt the designation "Certified" instead of "Grade A (Certified)," at any time before the 1st January.

It is contemplated that the conditions as to Grade A milk will be substantially modified, and that Local Authorities will be empowered to issue licences for this grade of milk. Representative Associations of the Local Authorities and of the trade will, however, be consulted before the Order is issued.

It is also contemplated that Local Authorities will be empowered to issue licences as to the use of the designation "Pasteurised," the general conditions governing the issue of licences being laid down in an Order.

It is not at present proposed to prescribe any additional designations.

SECTION 4 continues and extends the provisions of an existing Order of the Food Controller. The section prohibits the addition of any colouring matter or water, or re-constituted milk, or skimmed or separated milk, to milk intended for sale. This will enable Local Authorities to deal with cases in which such additions are made for fraudulent purposes but difficulty is experienced in proving that the mixture is sold as milk.

The section also prohibits the sale of re-constituted milk as milk.

SECTION 5 imposes a heavy penalty on any person who sells the milk of a cow suffering from tuberculosis of the udder where it is proved that he knew, or could have ascertained by ordinary care, that the cow was suffering from that disease. The maximum penalty for a second or subsequent offence is a fine of 100*l.* or imprisonment with or without hard labour for a period of six months, or both such fine and imprisonment.

SECTIONS 6 AND 7 lay down procedure as to the making of Orders.

SECTION 8 requires the Minister to make regulations as to imported milk under the Public Health (Regulations as to Food) Act, 1907. It also empowers the Minister to make regulations prescribing standards for dried and condensed milks, and the manner in which receptacles containing dried,

condensed, skimmed or separated milk are to be labelled or marked.

SECTION 9 deals with penalties and proceedings. Under sub-section (2) where the Local Authority are reasonably satisfied that an offence committed by a purveyor of milk is due to an act or default of a servant or agent, without the knowledge, consent, or connivance of his employer they are required to take proceedings against the servant or agent, without first proceeding against his employer. Sub-section (3) protects a person against conviction in respect of a sample of milk taken after the milk has left his custody and control, if it is proved that the churn or other receptacle in which the milk was contained was effectively closed and sealed when it left his custody and control, but was not so closed and sealed when it reached the person by whom the sample was taken.

SECTION 10 specifies the Local Authorities for the enforcement of the various sections of the Act. The enforcing authorities are the same as those at present concerned with the enforcement of similar provisions in the existing law. The section also provides out of what rate or fund the expenses of the Local Authority shall be paid.

SECTION 11 deals with the case of failure of a Local Authority to perform any of their duties under the Act, and makes provision for the transfer of powers or duties from a defaulting District Council to the County Council.

SECTION 12 exempts the retailer from actions for breach of contract if he is refused registration or removed from the register under Section 2 by reason of the quality of milk supplied to him.

SECTION 13, which follows the lines of Section 21 of the Sale of Food and Drugs Act, 1875, provides that the certificate of a Public Analyst shall be sufficient evidence of the facts stated therein unless the defendant shall require that the analyst shall be called as a witness.

The Minister desires to take this opportunity of drawing the attention of Sanitary Authorities to the very wide powers which they already possess for the sanitary control of dairies and cowsheds under the existing Dairies, Cowsheds and Milkshops Orders of 1885, 1886, and 1899, and the detailed Regulations which have been made by most Authorities under the first of those Orders. It seems to the Minister that by the careful and systematic exercise of existing powers,

together with the additional powers conferred under the new Act, Local Authorities should be able to take all necessary steps for the protection of the milk supply from contamination.

I am, Sir, your obedient Servant,
L. V. BROCK,
Assistant Secretary.

The Town Clerk, or
The Clerk to the Council.

FORMS OF INFORMATION AND SUMMONS.

The following forms of information and summons for offences under the Sale of Food and Drugs Acts are often used by inspectors :—

Ordinary information for offences under section 6 of the Act of 1875 :—

In the county of .
Petty Sessional Division of .
The day of , One thousand nine hundred and .
The information of Inspector of Weights and Measures, of , who states that of in the county of , on the day of One thousand nine hundred and at in the said county, did unlawfully sell to him, the said to the prejudice of the purchaser, a certain (*article of food*) to wit (*milk*) which was not of the nature, substance and quality of the (*article of food*) demanded, but (*contained added water*) contrary to the form of the Statute in such case made and provided.

Taken before me

Justice of the Peace for the County of .

19 .

The summons is in a similar form.

Information where a sample has been taken in course of delivery under section 3 of the Act of 1879:—

In the county of .
Petty Sessional Division of .
The day of one thousand nine hundred and .
The information of Inspector of Weights and Measures, of who states that he, on the day of , 192 , did procure at the place of delivery, namely, in the county of , a sample of (*milk*) in course of delivery by of the seller to one the purchaser thereof in pursuance of a certain contract of sale, and that suspecting such (*milk*) to have been sold by the said contrary to the provisions of the Sale of Food and Drugs Acts, the said did submit the same to the public analyst for analysis, when it was found to be not of the nature, substance and quality of the article demanded, but to have been unlawfully sold by the said to the prejudice of the purchaser inasmuch as it (*contained added water*) contrary to the form of the Statute in such case made and provided.
Taken before me

Justice of the Peace for the County of .

19 .

Summons where a sample has been taken in course of delivery under section 3 of the Act of 1879:—

In the county of , Petty Sessional Division of .
To of .
Information has been laid this day, by , of , for that you on the day of 19 , at the parish of in the county and district aforesaid, did unlawfully sell to to the prejudice of the purchaser an article of food to wit (*milk*) [which was not of the nature, substance and quality of the milk demanded but *contained added water*]

or [which when a sample thereof was procured at the place of delivery in pursuance of section 3 of the Sale of Food and Drugs Act, 1879, was found to be not of the nature, substance and quality of the milk demanded but to *contain added water*] contrary to the Statute in that case made and provided.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction, sitting at , in the said county on day, the day of , 19 , at the hour of in the forenoon to answer the said information.

Dated the day of , in the year of our Lord One Thousand Nine Hundred and

(L.S.)

Justice of the Peace for the County aforesaid.

NOTES ON SOME OF THE COMMONER FORMS OF ADULTERATION.

The following notes, which it is most convenient to insert here, treat of the various commodities named, and their adulteration from a chemical, rather than a legal, point of view :—

BAKING POWDER AND SELF-RAISING FLOUR.

These compounds contain acid and alkaline chemicals and on the addition of water evolve carbon dioxide gas. The acid ingredient is frequently tartaric acid, or cream of tartar, or a mixture of those substances, but sometimes acid calcium phosphate is employed. This chemical is liable to contain an unduly large proportion of calcium sulphate, this proportion varying from 2 per cent. to as much as 50 per cent. or more. A large excess of calcium sulphate arises from the fact that acid calcium phosphate is made by treating bone ash with sulphuric acid. The whole subject is exhaustively discussed by Dr. J. M. Hamill in a report presented to the Local Government Board in 1911 (Food Reports, No. 13). Dr. Hamill's main conclusions are that acid calcium phosphate, used for the preparation of baking powder or self-raising flour, should not contain more than

10 per cent. of calcium sulphate. Self-raising flour commonly contains about 2 per cent. of acid calcium phosphate, and such a compound should therefore not contain more than 0·2 per cent. of calcium sulphate. Several convictions have been recorded in police courts since the issue of Dr. Hamill's report in cases of self-raising flour containing 1 per cent. or a similar proportion of calcium sulphate.

In January, 1912, a vendor of baking powder was convicted in respect of the sale of baking powder which yielded only 1·86 per cent. of "total carbonic acid," the prosecution contending that it should yield at least 8 per cent. of "total" and 6 per cent. of "available" carbonic acid.

In November, 1919, at Ealing, a firm was fined 20*l.* and 10*l.* 10*s.* costs for selling "aerating powder" which contained excess of calcium sulphate and was also adulterated with rice starch.

BEER.

There have been comparatively few prosecutions for the adulteration of beer under the Sale of Food and Drugs Acts, and the few that have taken place have been generally for an excess of common salt. The question of a limit for the amount of salt in beer has been much discussed by analysts, but no general agreement has been arrived at on the subject.

The question of limit is in fact one that can only be decided with reference to the particular circumstances of each case. This is well shown by the fact that a special case (*Thorney* v. *Shute* (1893), unreported), which was stated by the Justices of Merthyr for the opinion of the High Court, was remitted to the justices by WRIGHT and MATHEW, JJ., with the following questions to be answered: (1) Was there such an excess of salt as to make the beer not of the (a) nature, (b) substance, (c) quality, of the article demanded? (2) Was there such an excess of salt as to be to the prejudice of the purchaser, as tending to increase thirst? (3) Was the amount of salt in excess of the quantity required for the production or preparation of beer as an article of commerce? It may, perhaps, be useful to add that in this particular case the justices answered the first two questions in the negative, while, as to the third, they gave it as their opinion that "any quantity may be used provided it is not injurious to health or added fraudulently."

Fines have been imposed in respect of the sale of beer containing 96 and 98 grains of salt per gallon.

At the Sessions House, Boston, a publican was summoned for selling beer adulterated with 60 grains of salt per gallon. Certificates of analysts for the defence were produced to the effect that the water with which the beer in question was brewed contained 30 grains of salt, and that between the quantity contained in the materials used in brewing, and the concentration of the chlorides through the evaporation of the water by boiling, the amount of salt would be increased from 18 to 20 grains per gallon. On this evidence the magistrate dismissed the case (*Analyst*, Vol. IX., p. 72).

In a civil action at Notts Assizes in 1921, evidence was given that a beer dealer had regularly added saccharin, burnt sugar and water to his beer.

An appreciable quantity of arsenic has occasionally been found in beer. It is, of course, not intentionally added as an adulterant, but its presence is due to the use of glucose instead of sugar in brewing. In 1922, several cases of lead poisoning among beer-drinkers occurred in Middlesex, the beer having dissolved a substantial proportion of lead (about one grain per gallon) from the glaze used to line the beer-tanks.

BUTTER.

Butter is an article in respect of which much fraud has been practised. Manufacturers of margarine have so perfected their processes as to be able to produce mixtures of various vegetable and animal fats which can scarcely be distinguished from butter by appearance, taste or smell, especially when the margarine is mixed with butter. According to a circular issued by the Local Government Board to boards of guardians some years ago, before vitamines came into prominence, there is no appreciable difference between the nutritive values of butter and margarine, and this probably still holds good in spite of the fact that more vegetable oils and fats are being used nowadays than formerly in the manufacture of margarine. But, apart from any question of the wholesomeness of margarine, a purchaser who buys margarine under the name of butter is undoubtedly prejudiced because of the great difference in the price of the articles.

In determining whether a sample of butter is genuine or

adulterated with foreign fat, analysts rely largely on the amount of volatile fatty acids found in the sample, the proportion in butter being much higher than that in margarine. Owing to the fact that the proportion of volatile fatty acids in genuine butter is not constant—that in Australian butter, for example, being higher than that in Siberian butter—it is possible to add to Australian butter a small proportion of foreign fat (with a percentage of volatile fatty acids less than that of genuine butter), and for the mixture to give the same figure for volatile fatty acids as would be given by genuine butter from Siberia or elsewhere. When, however, the proportion of margarine so mixed with butter is comparatively large, analysts have no difficulty in determining that a sample is adulterated.

By the Butter and Margarine Act, 1907, the maximum percentage of water in butter is fixed at 16. This figure is sometimes exceeded, especially if milk-blended butter is sold under the name of butter.

The Departmental Committee on Food Preservatives recommended in 1901 that boric acid in butter should not be used in a greater proportion than 0·5 per cent., that is to say, 35 grains per pound. Consequently, objection is not usually taken to boric acid if present in less than this quantity. There are, however, many experts who regard 0·5 per cent. of boric acid in butter as unnecessary and objectionable, and the tendency appears to be to reduce the proportion of boric preservative used. A proprietary preparation, containing an alkaline fluoride, has been advertised as a butter preservative.

CAKE.

A large trade has been developed in the importation from China of eggs in liquid form, either in the form of whole egg, or egg yolk and egg albumen separately. These articles are extensively used in the manufacture of cake, and serious exception has been taken to the unduly large proportion of boric acid in the imported egg products, this proportion often reaching, and sometimes exceeding, 2 per cent. Sponge cakes made with imported egg products have been found to contain as much as 60 grains of boric acid per pound, a proportion which is obviously altogether undesirable. A prosecution in Birmingham succeeded in 1922, the amount

of boric acid being 33 grains in 1 lb. of sponge cake. In the early part of 1922, the Ministry of Health took the matter up with representatives of the trades engaged in the importation and sale of liquid eggs, and these representatives eventually gave an undertaking not to manufacture or import liquid whole egg containing more than 1 per cent. of boric acid, and further undertook to secure a substantial reduction in the amount of boric acid contained in future shipments of egg yolk manufactured in China. The subject is also referred to in the Annual Report of the Medical Officer of the Local Government Board for 1917–1918.

CHEESE.

Exception is sometimes taken, naturally enough, to thick artificial rinds, composed of barytes and tallow, on Gorgonzola cheese. Other adulterants are fats other than milk-fat, and excess of water. There is no legal standard for the percentage of milk-fat in cheese, but prosecutions for deficiency of fat are not uncommon, the justices being asked in such cases to fix their own standard on the basis of the expert and trade evidence before them. The percentage of milk-fat in cheese varies in different varieties of cheese. Cheddar cheese usually contains about 30 per cent. of fat. Dutch cheese contains less, and Stilton cheese frequently more than that percentage.

A Cheshire bench in 1914 convicted under section 6 of the 1875 Act a vendor of Cheshire cheese containing only 17 per cent. of milk-fat, as they were of opinion on the evidence before them that Cheshire cheese must be made from practically whole milk and that cheese so made could not contain less than 24 per cent. of fat. The Cheshire county analyst stated that the proportion of fat in Cheshire cheese averaged about 30 per cent. In March, 1902, a Cambridge bench dismissed a summons in respect of Dutch cheese containing 10·83 per cent. of fat; the prosecution endeavoured to satisfy the bench that Dutch cheese should contain at least 16 per cent. of fat.

CHOCOLATE.

The cheaper varieties on the market often contain a small proportion of ground cocoa nib, and largely consist of various added substances, such as starch and sugar, which

are foreign to the cocoa plant. A conviction was obtained at the instance of the Westminster City Council in 1908 in respect of " milk chocolate " found to be not of the nature, substance and quality demanded, the article consisting of starch 6 per cent., fat 26·2 per cent. (mainly coco-nut oil), non-fatty solids 10 per cent., cane sugar and colouring 47·8 per cent. Here the proportion of cocoa matter other than husk was about 2·5 per cent. In a second case a conviction was obtained in respect of the sale of " broken chocolate," not of the nature, substance and quality demanded, the sample containing only 8 per cent. of cocoa matter, of which three-quarters was cocoa husk. After these cases had been heard, members of the British Chocolate Makers' Association, representing one section of the chocolate makers in Great Britain, unanimously pledged themselves to use in the production of chocolates not less than 10 per cent. of ground cocoa nib or 5 per cent. of cocoa essence produced entirely from the cocoa nib ; but this resolution was afterwards rescinded.

Some experts hold that cocoa shell, starch other than natural cocoa starch, and fats other than natural cocoa-butter, ought not to be present at all in a confection which is sold as " chocolate." But this is a question on which expert and trade opinion is not unanimous. What is certain is that cocoa shell, added starch and added fats are frequently found in samples sold as chocolate.

According to the Committee on Food Standards in the United States and to a decision of the United States Department of Agriculture, " chocolate " means the mass obtained by grinding cocoa nibs without the removal of fat or other constituents except the germ, containing not more than 3 per cent. of ash insoluble in water, 3·5 per cent. of crude fibre, and 9 per cent. of starch, and not less than 45 per cent. of cocoa fat.

Cocoa.

Powdered cocoa is commonly understood to mean the product obtained by grinding cocoa beans, freed from shell or husk and often deprived of a portion of the fat natural to the beans. In the so-called Dutch process cocoa is treated with an alkali or alkaline salt, usually a carbonate, and is then sometimes designated " soluble " or " solubilised " cocoa. There is a danger that the alkali so used may contain an excessive quantity of arsenic, and this was in fact

the case with soluble cocoa placed on the market by a well-known manufacturer, who was fined 50*l.* at Richmond (Surrey), in December, 1922. There also exist some forms of commercial or prepared cocoa, the best known of which is perhaps that which is prepared by the addition to pure cocoa of some farinaceous substance and sugar.

Standards for cocoa and chocolate have been made in the United States (Food Inspection Decision, 136, United States Department of Agriculture) and a number of resolutions recommending certain standards have been arrived at, without the co-operation of British manufacturers, by an international congress of manufacturers of cocoa and chocolate (see *The Grocer*, 9th September, 1911, p. 651).

COFFEE.

The preparation of substitutes for coffee is legally recognised, and their mode of sale in a separate state or mixed with coffee is subject to stringent statutory regulations for revenue purposes. Chicory, like coffee, may be sold loose, and in any quantity, but a mixture of chicory and coffee must be declared to the purchaser at the time of the sale either verbally or by a written notice or by a label.

CREAM.

Prior to the promulgation of the Public Health (Milk and Cream) Regulations, 1912 (see p. 220), the cream sold to the public in towns usually contained a boric preservative. For that reason, it was not then possible to state that the sale of such preserved cream under the name of "cream" constituted any offence under section 6 of the Sale of Food and Drugs Act, 1875. The Regulations of 1912, as amended in 1917, however, while not purporting to create any standard for the purposes of the Sale of Food and Drugs Acts, have altered trade custom by requiring cream containing preservative to be labelled "preserved cream," and have restricted the ordinary meaning of "cream" to cream which is free from preservative.

Prosecutions under the Sale of Food and Drugs Acts in respect of preserved cream have for the most part been taken not under section 6 but under section 3 of the Act of 1875, for the offence of selling cream admixed with preserva-

tive so as to be injurious to health. In the case of *Cullen* v. *McNair*, 72 J. P. 376, the High Court upheld a conviction on the ground that there was evidence on which the justices were entitled to find that cream containing 0·313 per cent. of boric acid was injurious to the health of children and invalids. In the case of *Whale* v. *Bennett*, heard at London Quarter Sessions in May, 1913, the justices, after hearing a mass of expert evidence, decided that cream containing ·3187 per cent. of boric acid (22·309 grains per pound) was injurious to health and that the sale of such an article, even when it was labelled "preserved cream," was an offence under s. 3. Since the Milk and Cream Regulations were made nearly all local authorities have preferred to bring cases under those regulations rather than under the Sale of Food and Drugs Acts.

With respect to the percentage of boric acid to be allowed, the Departmental Committee on Preservatives and Colouring Matters in Food recommended in 1901 that boric preservatives should not be allowed to exceed 0·25 per cent. expressed as boric acid. In a report to the Local Government Board (Food Reports, No. 10, 1909), Dr. J. M. Hamill suggested that the maximum percentage to be permitted should be 0·4 (28 grains per pound) from May to October inclusive, and 0·25 (17½ grains per pound) during the remainder of the year. But the amending Regulations of 1917 permit 0·4 per cent. at any period of the year so long as the presence of the boric acid is properly declared by label.

Other substances which have been known to be used as preservatives for cream include benzoates and salicylates, sulphites, hydrogen peroxide, a proprietary mixture containing sodium nitrite and formaldehyde, and a proprietary preparation containing 37 per cent. of potassium fluoride. References to the use and detection of these preservatives will be found in Dr. Hamill's Report (quoted above), Dr. G. W. Monier-Williams' Report to the Local Government Board (Food Reports, No. 17, 1912), and Dr. A. W. J. MacFadden's Annual Report to the Local Government Board on the work of inspectors of foods in 1912—13.

Various substances have been used for thickening cream or concealing inferior quality. These include gelatin, cornflour, a solution of lime in cane sugar syrup, and an emulsion of albuminoid matter with milk and water. These are more

fully discussed in a circular issued to local authorities by the Board of Agriculture on October 1st, 1909. The "reconstitution" of cream from butter, separated milk powder and water, is a practice commenced in 1922 and open to much objection.

At Bradford in 1922 a fine was imposed on the vendor of tinned cream which was found to consist of one part of cream with nine parts of milk.

A vegetable substitute for cream, containing 43 per cent. of "nut fats," was placed on the English market under a proprietary name in 1913.

DEMERARA SUGAR.

"Demerara sugar" is a term around which much controversy has raged in proceedings under the Sale of Food and Drugs Act, and the difficulties of defining its meaning are increased by the fact that the process adopted in its production in the West Indies has altered more than once. At the present time, it is fairly generally agreed that the term must not be applied to beet sugar, but only to cane sugar. Strenuous efforts have been made on behalf of planters in the West Indies to insist that the term Demerara sugar applies only to cane sugar made in British Guiana or the neighbouring islands by what has been called the Demerara process.

The sugars originally made in Demerara were of the class called "muscovado," and were made by a process of boiling and crystallisation in open pans. Later, these open pans were largely superseded by vacuum pans, and the old-fashioned brown sugar began to give place to the more yellow "Demerara" crystals.

Other changes followed, and at the present time it would appear that the sugars made in Demerara may be divided into two distinct classes—a yellow sugar which goes into direct consumption, and a darker sugar which needs to be refined before being placed on the market.

Another complication is introduced by reason of the fact that a small proportion of chloride of tin was formerly used in the Demerara process of sugar refining for the purpose of fixing the natural colour of the product. But this practice has been largely, if not entirely, discontinued, and the use of an organic dye now appears to be more common.

In the case of *Anderson* v. *Britcher* (1913), 78 J. P. 65, the

magistrate found that sugar which had been sold as Demerara sugar was cane sugar grown in Mauritius and coloured with an organic dye, and further that the term "Demerara sugar" was now a generic term applicable to any sugar of the substance, kind and colour of the sugar in question wherever produced. The High Court refused to disturb these findings, but Avory, J., specially stated that he did not decide that cane sugar made anywhere could properly be described as Demerara sugar merely because it had a yellowish tint.

DRUGS.

There are no standards of quality laid down in the Acts for drugs, and they contain no provision making the British Pharmacopœia a standard for such drugs or medicines as are specified therein. A suggestion was made in 1879 before the Select Committee on the Amendment Bill (now the Act of 1879) that it would be desirable to incorporate with the Sale of Food and Drugs Acts s. 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), which directs chemists to compound medicines of the British Pharmacopœia according to the formulæ therein, but the committee apparently did not see their way to adopt the suggestion. The proposal was again made to the Select Committee of 1894—1896 (p. 39 of Committee's Report), but they made no recommendation in their report on the subject.

The British Pharmacopœia, which is somewhat restricted in its scope, and is essentially intended to establish a uniform standard of strength and composition of drugs for the use of the medical profession in prescribing for their patients, could not be expected to include and govern the great variety of medicinal preparations which are prepared and sold under various names for domestic use. When, however, any British Pharmacopœia medicine is asked for, especially in the exact terms of the description given of the same in the "Pharmacopœia," it is usually necessary that the person should be supplied with the article prepared according to the formula given therein, unless adequate reason be shown to the contrary. Adequate reason may be so shown to the contrary if it be proved that the description in the Pharmacopœia is technically incorrect, or that more than one kind or quality of article are known in commerce

by the description given. This is the case with respect to some drugs, but the majority of drugs and compounds described in the British Pharmacopœia are substances with respect to which no question can arise of any other variety or quality than that described being known in commerce, and in such cases it is clearly an offence to sell under the official name any drug other than that which is described in the Pharmacopœia.

But it is to be remembered that the Pharmacopœia may, in addition to giving a formula for the manufacture of a compound, proceed to state what chemical tests shall be satisfied by the finished product. And in some instances it has been found that these tests cannot be satisfied if the official formula be followed in preparing the compound. So it may happen that as the result of evaporation or other cause a drug at the time of sale may not have the same constitution as when it was made. In cases of this type also it is necessary to consider how far the "standards" of the British Pharmacopœia can be regarded as valid.

Egg Powder and Egg Substitute Powder.

Before the discovery of a process for drying eggs and making a powder consisting of dried egg without the addition of any other article, the name of "egg-powder" used to be given to a coloured and flavoured baking-powder. During recent years many powders actually consisting of dried egg have been placed on the market, and the artificial product is now usually sold under the name of "egg substitute." A firm was convicted at West Hartlepool in November, 1919, for selling egg substitute powder which contained an excess of calcium sulphate. There is no reason why any egg powder or egg substitute powder should contain boric acid or any such preservative. "Custard powders" are often merely coloured and flavoured preparations of starches. Misleading descriptions of egg powders and custard powders are by no means uncommon.

Flour.

Bleaching.—On July 31st, 1912, in the Hamilton Sheriff's Court, Sheriff Shennan gave a considered judgment after hearing a large amount of expert evidence in a prosecution in respect of bleached flour, from which the following are

extracts :—" It is not proved that a proportion of nitrites amounting to 3·43 parts per million parts of flour so alters the nature, substance, and quality of flour as to alter its genuineness . . . Excess of nitrites, even in greater quantity than 3·43 parts per million, may in certain circumstances be acquired by flour through atmospheric or other conditions without affecting the genuineness of the flour or its nutritive value . . . Finding, in fact, as I do, that the flour has been bleached with peroxide of nitrogen, I have next to face the great subject of controversy in this case, viz., whether flour so bleached is genuine . . . My view is that the result of commercial bleaching so far as the evidence before me goes is merely to alter the colour to suit the taste of the consumer, without altering the nature, substance, and quality of the flour so as to make it a different article. So long as the nature, substance, and quality are not affected there is no law against the miller bleaching. The colour of the flours from various wheats varies, and therefore bleaching is resorted to to preserve uniformity." The county council of Lanarkshire decided not to appeal against this decision.

An important and lengthy report on the whole subject of the bleaching of flour by nitrogen peroxide and of the addition of so-called improvers to flour was made to the Local Government Board by Dr. J. M. Hamill in 1911 (Food Reports, No. 12). Dr. Hamill concluded that in the present state of knowledge it would be unwise to consider that the process of bleaching flour with nitrogen peroxide is attended by absolute freedom from risk, and he further expressed the opinion that the consumer of bleached flour cannot be said to receive any compensating benefit.

Improvers.—In the same report Dr. Hamill discusses the practice of adding phosphates and other so-called improvers to flour with the object of increasing its strength and water-absorbing capacity. His conclusions are distinctly unfavourable to the use of such improvers. Subsequently, in 1913 and 1914, the Hull stipendiary heard a very important prosecution under s. 6 of the Act of 1875 in respect of the sale of flour certified to contain 6·3 parts of potassium persulphate per 100,000. After a very lengthy hearing, the stipendiary dismissed the information on the grounds (1) that the potassium persulphate was introduced in the

course of the preparation of the flour as an article of commerce in a state fit for consumption; (2) that the addition did not prejudice the purchaser, but actually improved the flour, was not put in to conceal inferior quality and was introduced in such a small quantity as to be wholly innocuous in its effects.

GROUND ALMONDS.

Oatmeal is sometimes added to almonds for the purpose of absorbing moisture in the process of grinding. In March, 1908, a summons was dismissed in the Glasgow Sheriff Court on the ground that this use of oatmeal is usual and necessary, but many leading firms declare that the addition of oatmeal should not be permitted, and that almonds may easily be ground without the use of any absorbent.

JAM AND MARMALADE.

Jams are often adulterated by the addition of other and cheaper fruits than those asked for. Thus "strawberry" and "raspberry" jams often consist largely of gooseberries, while the juice or pulp of apples is frequently added to plum and other jams. Jam-makers are divided into two camps—those who state that there is no manner of need to mix the juice of one fruit with that of another, and those who allege that this practice constitutes a desirable improvement. Several convictions in respect of such mixtures have taken place in police courts. In December, 1913, at Marylebone Police Court, a stipendiary magistrate, convicting a retailer of raspberry jam containing apple pulp, after a series of sittings, stated in a considered judgment that he was satisfied that for a period of thirty or forty years the standard jam had been regarded as jam containing the best fruit with refined sugar only, and that the introduction of a fruit juice had always been regarded as an adulteration of the genuine article (*British Food Journal*, December, 1913).

At the Sittingbourne Petty Sessions a grocer was summoned for selling as plum jam a certain compound which consisted of a mixture of plum and apple. The inspector asked for *Steer's plum jam*, and the defendant pleaded that he got what he asked for, and that, being sold under the above name, it need not necessarily be composed of plum

only. The magistrates, however, imposed a fine, as they considered that if jam was sold as *plum jam* it ought not to be a mixture of plum and apple, and that its sale was an offence under the statute (*Analyst*, Vol. IX., p. 50).

In making jam and marmalade glucose is often used instead of sugar, about 13 per cent. being an average proportion. This is said to prevent the growth of mildew, and in the case of marmalade it is now settled that the practice is unobjectionable (see *Smith* v. *Wisden* and *Wilson* v. *McCutcheon*, *ante*, p. 31), and probably this ruling would also apply to jam. But glucose made of impure materials sometimes contains arsenic (see p. 316, *ante*), and the sale of jam made of such glucose would be an offence under the Acts.

Part IV. (which has since been revoked) of the Sale of Food Order, 1921, made it necessary that the water soluble extract of jam should be not less than 65 per cent. of the jam, and that not more than 10 per cent. of the jam measured by weight should consist of added fruit juice. The Order, which was made in continuation of certain Orders made by the Food Controller during the War, dealt also with the descriptions to be applied to certain mixed jams, and further contained a definition of marmalade.

The addition of harmless colouring matter is usually considered to be quite legitimate, but objection may fairly be taken to chemical preservatives, which are unnecessary for ordinary purposes of home trade if the jam is properly made. In March, 1912, a shopkeeper was convicted at Greenwich for selling black-currant jelly containing 5·6 grains of salicylic acid per pound.

LARD.

Pure lard is made exclusively from hog fat, and rarely contains more than a few tenths per cent. of water. A temporary war-time Order, since revoked, prohibited the sale of edible fats (other than butter, margarine or dripping) containing more than 0·5 per cent. of free fatty acids, or more than 0·5 per cent. in all of water and substances other than oil or fat. The same Order enacted, with regard to dripping, that this substance should not contain more than 2 per cent. of free fatty acids or more than 1 per cent. in all

of water and substances other than fat. A practice at one time existed of mixing about 5 per cent. of beef fat or stearin for stiffening purposes with imported American lard and the lard refined in this country from American lard. Lard substitutes, made of vegetable fats such as coco-nut or cottonseed oils, are sometimes sold as lard, and the addition of paraffin wax is not unknown.

MEAT-FOOD SUBSTANCES.

Sausages and many other meat-food substances are often preserved with borax or boric acid. There is much difference of opinion as to the proportions of preservative which may be considered to be respectively injurious to health or to the prejudice of a purchaser.

At the Burnley Quarter Sessions in 1908, the Recorder quashed a conviction under s. 6 of the Sale of Food and Drugs Act, 1875, in respect of sausages containing 29 grains of boric acid per pound. The learned Recorder held in this case that there was no prejudice to the purchaser. And at Manchester a stipendiary dismissed a prosecution in respect of sausages containing as much as 70 grains of boric acid per pound. On the other hand, prosecutions have succeeded in courts of summary jurisdiction where the amount of preservative in similar articles has been as little as 18·7 grains per pound. At Dunstable in 1922, a fine of 15*l.* was inflicted on a vendor of sausages containing 44·24 grains of boric acid per pound.

Potted shrimps often contain substantial proportions of boric acid. A bench of magistrates recently dismissed a case where the amount was 71·4 grains per pound, and a conviction was recorded elsewhere in respect of a slightly higher proportion of preservative.

In a report to the Local Government Board (Food Reports, No. 6, 1908), Dr. A. W. J. MacFadden stated that the majority of canned and glass-packed meat foods were prepared without the use of any preservatives, and that it is neither desirable nor necessary that canned meats should remain among the already formidable list of foods in which boron or other preservatives may be present. With respect to sausages, pork-pies, mince-meats, brawns and the like, Dr. MacFadden remarks that a limit of 0·25 per cent. of

boric acid (about 18 grains to a pound) would probably be ample to meet legitimate trade requirements.

With respect to the use of sulphites and of formaldehyde for the preservation of meat-food substances, there is fairly general agreement that the use of these preservatives is undesirable and frequently harmful. Perishable meat-food substances and chilled meat prepared for a period of transit by sea extending to several weeks have been treated with formaldehyde for the purpose of preservation. Formaldehyde is a powerful disinfectant and has a harmful effect on digestion. For these reasons it seems clear that the presence of formaldehyde in such articles of food is both injurious to health and to the prejudice of the purchaser. The matter is dealt with in some detail by Dr. G. S. Buchanan and Dr. S. B. Schryver in a report to the Local Government Board (Food Reports, No. 9, 1909).

In 1921 various Lancashire benches convicted, under s. 6 of the 1875 Act, dealers who sold sausages containing less than 50 per cent. of sausage meat, and the Birkenhead justices announced their intention of insisting that sausages should contain at least that proportion of meat.

At Nottingham Quarter Sessions in July, 1921, the Recorder quashed a conviction in respect of the sale of salmon and anchovy paste containing about 20 per cent. of starchy "filler," 26 per cent. of water, and 54 per cent. of salmon and anchovy, on the ground that no evidence had been called to show what was commercially understood by "salmon and anchovy paste."

Starch, usually in the form of rice flour, and bread are sometimes found in substantial quantities in potted meats. If the quantity be excessive this may be considered as an adulteration.

MILK.

Milk is an article which varies very considerably in composition, the difference arising partly from the breed of the cow, and partly perhaps from the way in which the animal is fed and housed. Experiments during the War in Denmark and elsewhere have tended, however, to show that reduced rations had no adverse effect on the proportion of

fat in milk. The best opinion to-day appears to be that feeding makes less difference to the quality of the milk than used to be supposed. There is also a perceptible difference between the milk given by the same cow at different times of the year. The quality of milk is often poorest about the second or third month after calving, and then improves steadily with advancing lactation. The fat content is usually lowest in May and June, and highest in December. The non-fatty solids are lowest in July, August and September, and highest in December and January. The afternoon's milking is generally richer in fat than the morning's; and this disparity is the more marked when the interval between the afternoon's and the next morning's milk is considerably greater than between the morning's and afternoon's milking, as during the longer interval some of the fat is reabsorbed. The intervals between the two daily milkings should be as nearly alike as practicable. The effect of uneven milkings on the non-fatty solids is less marked than is the case with the fat, and tends to be of a converse nature.

In times of drought, the percentage of non-fatty solids tends to be a little low. Jersey cows often give milk which is especially rich in fat; Dutch cows' milk commonly contains a low percentage of fat. Though there is no doubt that individual cows, especially of some foreign breeds, sometimes give milk which fails to come up to the standard, the mixed milk of a herd of healthy cows is almost invariably well above the standard.

A large amount of valuable statistical and other information with reference to the composition of milk will be found in the Report and Minutes of Evidence of the Departmental Committee on Milk and Cream, 1901, and also in the *Journal of Agricultural Science*, May, 1905.

The average percentage of non-fatty solids in milk from British shorthorn cows is probably not less than 8·85 and of fat not less than 3·65. When this is borne in mind, it will be observed that the percentage of adulteration in a sample unfavourably reported on by the public analyst is usually greater than is indicated by a calculation based on the figures (of 8·5 and 3 per cent.) adopted by the Board of Agriculture in framing the Sale of Milk Regulations.

The most usual methods of adulterating milk are:—(1) the mixing of skimmed or separated milk with whole

milk; (2) the addition of water. The first method reduces the percentage of fat and slightly increases the percentage of non-fatty solids; the second reduces the percentage of fat and also that of non-fatty solids.

A process of manufacturing synthetically an artificial substitute for milk has been devised, the basis being casein obtained from the soya bean. To this basis fatty acids, sugars and salts are added in definite proportions, and emulsification is carried out.

Milk is sometimes reconstituted by the addition of water to dried milk powder or condensed milk. This is forbidden by the Milk and Dairies (Amendment) Act, 1922.

Preservatives in milk, according to most authorities, are wholly unnecessary, and should not be permitted, even in the smallest quantity. This view was emphatically expressed in the Annual Report of the Local Government Board for the year 1907—1908. Those most commonly employed are boric acid or borax and formaldehyde; benzoates have been known to be used, and a preparation of which the principal ingredient is an alkaline fluoride has also been placed on the market.

Annatto, or some other harmless colouring matter, was at one time commonly used, but the addition of such colouring substances is objectionable, as it tends to conceal inferior quality, and the sale of coloured milk is now an offence under the Milk and Dairies (Amendment) Act, 1922.

Attempts have sometimes been made to invoke the penal provisions of the Sale of Food and Drugs Acts in order to punish vendors of dirty milk or milk containing an excessive number of objectionable bacteria, but the High Court case of *Kenny* v. *Cox* (1920) (see p. 27) lends no encouragement to such efforts.

Buttermilk, which is used as an article of diet in some parts of the kingdom, also varies greatly in composition, because a certain amount of water has often to be added to the milk in the process of butter-making in order to facilitate the separation of the butter fat, and this quantity varies with the temperature of the air at the time of butter-making. But an addition of more than 25 per cent. of water ought to be regarded as fraudulent, and even 25 per cent. ought only to be necessary under quite exceptional circumstances.

Condensed milk, dried milk and milk powders have been

thoroughly investigated by officers of the Local Government Board, and two lengthy reports by Dr. Coutts have been issued on this subject (Food Reports, No. 15, 1911, and No. 24, 1918). Dr. Coutts advocated, among other recommendations, (1) the prevention of the use of skim milk for infants, (2) the prohibition of the use of preservatives except sugar, (3) control over trade statements likely to mislead purchasers, and (4) declaration of the content of milk fat and of added substances foreign to milk. Milk powders can be made with practically any proportion of fat between 1 per cent. and 25 per cent., or even more. In the Commonwealth of Australia, and in many other countries, Regulations have been made dealing with standards for condensed, evaporated, and dried milks. Many evaporated milks, principally of American origin, reach the English market in tins, the percentage of fat in these being usually between 7·5 and 9·0. Many of these products are guaranteed to contain at least 7·8 per cent. of fat and 25·5 per cent. of total solids.

MUSTARD.

At Jedburgh, Scotland, before the sheriff, several grocers were summoned for selling certain quantities of Colman's mustard not of the nature, substance, or quality demanded. The defendants proved that it was not usual to sell the pure mustard unless specially asked for; also if mustard was not mixed with some article to absorb the oil of the mustard, it became lumpy by keeping, and was also too strong for table use. The sheriff dismissed the cases, stating that it was quite evident that when a customer asked for mustard he expected to get it mixed unless he specially asked for pure mustard (*Analyst*, Vol. VII., p. 91).

In *Sandys* v. *Markham* (1887), 41 J. P. 52, where mustard had been sold containing an admixture of flour, the justices found as a fact that 35 per cent. of flour was required for the preparation of mustard as an article of commerce in a fit state for consumption. As the case disclosed no evidence whatever to support such a finding, it was remitted to be re-stated.

As many persons prefer diluted mustard, to meet the difficulty, mustard containing an admixture of flour is often

described as "*mustard condiment*"; and there seems no doubt that it ought to be so described in order that no risk of a prosecution may arise.

NON-ALCOHOLIC DRINKS.

Lime-juice cordial and other temperance beverages frequently contain small proportions of salicylic acid as a preservative. Metropolitan stipendiary magistrates have dismissed summonses in respect of lime-juice cordial under s. 6 of the 1875 Act when the amount of salicylic acid has been about 6 grains per pint, in spite of the recommendation of the Departmental Committee on Food Preservatives in 1901 that salicylic acid should not be used in greater proportions than 1 grain per pint in liquid food.

Salicylic acid is employed for the prevention of alcoholic fermentation in sugar-sweetened drinks rather than for the elimination of bacilli. Drinks sweetened with saccharin instead of sugar are not liable to alcoholic fermentation. It is held by some medical experts that salicylic acid, even in quite small proportions, has injurious effects on digestion. In 1913 and 1914 the Bedfordshire justices fined a number of retailers for the sale to the prejudice of the purchaser of raisin wine containing 7·6 grains per pint and 9·62 grains per pint, and of orange wine containing 4·2 grains per pint of salicylic acid. The quantity of salicylic acid alleged by manufacturers of non-alcoholic wines to be requisite depends on the proportion of sugar in the wines. Trade experts have frequently stated in evidence that on the average 4 or 5 grains of salicylic acid per pint is a necessary amount. The only alternative would appear to be complete sterilisation in the bottle, or the use of saccharin in place of sugar.

In 1920 and 1921 a considerable number of convictions were recorded in Richmond and Kingston, Surrey, heavy fines being imposed, in respect of the sale of lime-juice, lemonade, lemon squash, raspberry cordial, black currant cordial and the like. These liquids were certified to consist essentially of sweetened, flavoured, coloured, diluted, and sometimes preserved solutions of phosphoric acid. In the case of the fruit cordials, 5·1 grains of salicylic acid per pint were also certified as present.

PEPPER.

Pepper is liable to contain a small proportion of sand and earthy matter, which may have become mixed with it in the process of collection, preparation or grinding. Experts have stated that "although sand is not a natural constituent of pepper, a greater or less quantity becomes mixed with it in the process of collection or preparation, and we have found ground Penang pepper, which is the kind most extensively used in this country, to contain, as sold by some of the best wholesale houses, from 1·58 to 2·77 per cent. of such extraneous sandy matter, and ground Siam pepper, occasionally but not largely used, 3·27 per cent."; and that the last-named quantity is a reasonable margin for the presence of unavoidable sandy matter.

Pepper is liable to be adulterated by the addition of rice or other starch, of small proportions of turmeric and of ground olive-stones. In one instance, 0·2 per cent. of lead chromate, a poisonous chemical used as a colouring agent, was found.

White pepper is commonly understood to consist of the berries of the black pepper fruit, from which some portion of the pericarp or husk has been removed. Much controversy has arisen over the proportion of husk which should be so removed. Prosecutions have been instituted in Lancashire in respect of white pepper stated to contain from 10 to 15 per cent. of husk, the prosecution contending that 2 per cent. is the maximum allowable. Against this, it is urged that some of the layers of the husk contain relatively large proportions of resin, oil, and piperin, that the husk is more pungent than the berry, and that black pepper is therefore more valuable as a condiment than white pepper, although the latter seems to be more costly and more esteemed by the public. And it seems to be a trade practice to grade peppers by processes of decorticating and sifting.

In the spring of 1914, the Liverpool stipendiary adopted the view that white pepper should not contain more than 2 per cent. or 3 per cent. of husk, and imposed several fines. A similar view was taken by the Blackburn Borough Bench, but this decision was reversed by the Recorder at Blackburn Quarter Sessions.

RAISINS.

Valentia and Sultana raisins are sometimes treated with sulphur dioxide in order to make the colour paler and more uniform. It is usually found, however, that by the time the raisins reach the hands of the consumer no trace of the chemical remains to be detected by analysis.

RICE AND PEARL BARLEY.

In a report to the Local Government Board (Food Reports, No. 8, 1909), Dr. J. M. Hamill states that rice is often treated or " faced " with mineral substances, such as talc, in order to give it a brighter and more polished appearance. He recommends that not more than 0·5 per cent. of such added mineral matter should be permitted in rice. It must be remembered that rice naturally contains a small percentage of mineral constituents. Pearl barley is similarly liable to be faced with talc, and there have been several prosecutions arising therefrom.

SAGO.

It appears that in some districts a particular form of tapioca, often called " pearl seed tapioca," is sold as sago. This is probably not done for any fraudulent purpose, and there is reason to believe that in those districts an ordinary purchaser asking for sago would expect to get this tapioca and would refuse the genuine sago if it were offered. Under these circumstances this article may, of course, be legitimately sold as sago, and a decision to this effect was given by the King's Bench Division in the case of *Sandys* v. *Rhodes* (1903), 67 J. P. 352.

SHREDDED SUET.

In order that this article may be placed on the market in suitable condition, the addition of ground rice is a common practice. During the War, as an emergency measure, as much as 17·5 per cent. of ground rice was permitted, but subsequently it has been considered by many persons that 15 per cent. or less should be regarded as the maximum. At

Lambeth in 1921 exception was taken to the sale of shredded suet containing 23 per cent. of ground rice, and the vendor was ordered to pay 5*l.* 5*s.* as costs.

SPIRITS.

Whisky, brandy, rum and gin must not be reduced by the addition of water so as to be more than 35 degrees under proof without notice to the purchaser (Licensing Act, 1921, s. 10).

TINNED FOODS.

All foods canned in the ordinary way are liable to some contamination with tin. Sometimes the tin may be found in the solid portions of the food, and often it may be dissolved in syrups or juices or other liquids. Certain tinned fruits and vegetables, by reason of their natural acidity, are especially liable to contamination, and the amount of such metallic contamination is apt to increase with the lapse of time. Dr. Buchanan (L.G.B. Reports of Inspectors of Foods, No. 7, 1908) states that " the presence in the contents of a sample can of tin in quantities approaching 2 grains to the pound may be taken to signify that the food has become potentially deleterious to health." The quantity in recently tinned foods is usually under 1 grain per pound, and convictions have been recorded where there has been more than 2 grains per pound.

TINNED VEGETABLES.

These are sometimes coloured green with copper salts, which are highly injurious to health if swallowed in excessive quantity. The Departmental Committee of 1899 recommended that the use of copper salts in colouring preserved foods should be absolutely prohibited. But in the case of *Friend* v. *Mapp* (1904), 68 J. P. 589, the High Court refused to disturb a finding by justices that a purchaser of " preserved peas " was not prejudiced when the peas contained as much as 2·55 grains of copper sulphate per pound. Different local authorities take different lines of action. Some allow 2 grains or even more of crystallised copper sulphate per pound, while others have succeeded in prosecutions for a considerably smaller proportion (Kensington,

1921, 1·79 grains per pound, conviction, and Bow Street, 1922, 1·4 grains per pound, conviction).

VINEGAR.

Considerable quantities of artificial vinegar, consisting frequently of a dilute and coloured solution of acetic acid, are sold simply as " vinegar." Other questionable operations include the addition of sulphuric acid, sometimes to the extent of 0·2 per cent., and the sale of vinegar diluted so as to contain too small a proportion of acetic acid. There is no doubt that artificial vinegar should not be sold as " malt vinegar " ; but opinions in the vinegar trade differ as to the propriety of applying the term " vinegar " without qualification to the artificially prepared substances. In a report to the Local Government Board (Food Reports, No. 5, 1908), Dr. J. M. Hamill remarks : " It appears to me to be in the interests of the consumer that vinegar which has been prepared by colouring and flavouring a solution of acetic acid should not be represented as merely ' vinegar ' or as ' malt vinegar,' but should be sold under some designation which, if it retains the word ' vinegar,' should also make the nature of the product apparent. Artificial vinegars as a class are inferior in taste and flavour to vinegars which are solely the product of alcoholic and acetous fermentation of the saccharine liquors usually employed for the purpose, and in ordinary circumstances the nature of these artificial vinegars can be ascertained by chemical examination." Dr. Hamill further states that the presence of any sulphuric acid in vinegar must be regarded as an adulteration, and he adds that there are substantial reasons for maintaining that all genuine vinegars should contain at least 4 per cent. of acetic acid. Dr. Hamill's report has been endorsed by the Local Government Board. In a letter addressed to the trade in December, 1911, the Local Government Board expressed the opinion that malt vinegar is vinegar derived wholly from malted barley or wholly from cereals, the starch o, which has been saccharified by the diastase of malt ; and that " vinegar " is " a liquid derived wholly from alcoholic and acetous fermentations ; it shall contain nto less that 4 grammes of acetic acid (CH_3COOH) in 100 cubit centimetres of vinegar, it shall not contain arsenic in amounts

exceeding 0·0143 milligrammes in 100 cubic centimetres of vinegar, nor sulphuric or other mineral acid, lead, or copper; nor shall it contain any foreign substance or colouring matter except caramel." The United States Department of Agriculture also requires vinegar to contain not less than 4 per cent. of acetic acid. Vinegar is liable to metallic contamination, especially with copper, and preservatives such as bisulphites are sometimes used.

THE MILK (SPECIAL DESIGNATIONS) ORDER, 1922, DATED DECEMBER 9, 1922, MADE BY THE MINISTER OF HEALTH UNDER SECTION 3 OF THE MILK AND DAIRIES (AMENDMENT) ACT, 1922 (12 & 13 GEO. 5, c. 54).

[S. R. & O., 1922, No. 1332.]

The Minister of Health, in exercise of the powers conferred on him by Section 3 of the Milk and Dairies (Amendment) Act, 1922 (*a*), and of any other powers enabling him in that behalf, hereby orders as follows:—

(*a*) *Ante*, p. 192.

1. This Order may be cited as the Milk (Special Designations) Order, 1922.

2.—(1) In this Order, unless the context otherwise requires—

"The Minister" means the Minister of Health;

"Licensing authority" means, in relation to any application for the grant of a licence, the authority which has power under Section 3 (1) of the Milk and Dairies (Amendment) Act, 1922, or this Order to grant the licence, and in relation to any licence which has been granted means the authority by which the licence was granted;

"District Council" means an urban or rural district council and in relation to London means a metropolitan

borough council and the Common Council of the City of London;

"Herd" means the milch cows kept on the farm in respect of which any licence is applied for or granted, as the case may be, and includes any other bovine animal kept in contact with such cows;

"Sell" includes offer or expose for sale, and "sale" shall be construed accordingly;

"Dealer" means any person who sells milk either by wholesale or retail under any of the special designations referred to in this Order;

"Producer" means a dealer owning or having the control of a herd from which milk sold under any of the special designations is obtained;

"Examination" of an animal means a clinical examination, carried out in such manner as the Minister may direct, by a veterinary surgeon nominated by the licensing authority with the concurrence of the Minister, and "veterinary surgeon's certificate" means a certificate, in a form approved by the Minister, signed by the person who has made such examination and certifying the result thereof;

"Tuberculin test" of an animal means a test made with tuberculin, in such manner as the Minister may direct, by a veterinary surgeon nominated by the Minister, and "Certificate of a tuberculin test" means a certificate, in a form approved by the Minister, signed by the person making the test and certifying the result thereof;

"Sample" means a sample taken by a person duly authorised in that behalf by the licensing authority.

(2) The Interpretation Act, 1889 (*a*), applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(*a*) 52 & 53 Vict. c. 63.

3 The special designations under which milk may be sold or offered or exposed for sale in pursuance of this Order are the following, namely:—"Certified," "Grade A (Tuberculin tested)," "Grade A," and "Pasteurised."

4. Subject to the provisions of this Order, and without prejudice to the power to grant licences conferred on the

Minister by Section 3 (1) of the Milk and Dairies (Amendment) Act, 1922, every county council and county borough council is hereby authorised to grant licences to producers to sell milk as " Grade A," and every district council is hereby authorised to grant licences to any person other than a producer to sell milk as " Certified," " Grade A (Tuberculin tested)," " Grade A," and " Pasteurised " : Provided that in any case in which the Minister is satisfied that a county council are unwilling or do not propose to exercise in any district the power of granting licences hereby conferred on them, the Minister may authorise the district council to grant such licences in place of the county council.

5.—(1) Every licence granted under this Order shall be in the form contained in the First Schedule hereto with such modifications, if any, as the circumstances may require.

(2) Subject as hereinafter provided, every licence shall be valid for a period ending on the 31st day of December in the year in respect of which it is granted.

(3) A licence granted by a local authority shall not entitle the holder to sell milk under the terms of the licence outside the area of the authority except by wholesale.

(4) Where the holder of a licence desires to sell milk under the designation specified in the licence by retail outside the area of the licensing authority from a shop or other premises within that area, the licensing authority of the area in which he proposes to sell the milk, may grant him a supplementary licence entitling him to sell milk under that designation in their area from such shop or other premises, but in that event nothing in this Order shall authorise the licensing authority, either before the grant or during the currency of the supplementary licence, to exercise any powers under this Order outside their area.

6.—(1) Application for a licence shall be made in writing to the licensing authority.

(2) Before granting a licence to a producer the licensing authority shall require him to produce a veterinary surgeon's certificate showing the results of an examination of the herd carried out not more than one month before the date of the application, and, in any case in which the conditions of the licence, if granted, would include the tuberculin test, a

certificate of a tuberculin test of the herd carried out within a period of three months.

(3) Subject to the provisions of this Order, the licensing authority shall require every applicant to satisfy them that his arrangements for the production, storage, treatment and distribution of the milk, as the case may be, are such as to comply with the conditions upon which the licence may be granted.

7.—(1) Every licence granted under this Order shall be subject to the general conditions set out in the Second Schedule to this Order.

(2) In addition to the general conditions every licence for the sale of milk as "Certified," "Grade A (Tuberculin tested)," "Grade A," and "Pasteurised" shall be subject to the conditions set out in Parts I., II., III. and IV. of the Third Schedule to this Order respectively.

8. The fees payable for licences shall be those set out in the Fourth Schedule to this Order, but where a licence is granted for a period of less than a year, the licensing authority may grant the licence upon payment of such sum being less than the full fee as they think fit, having regard to the period for which the licence will operate.

9.—(1) A licensing authority may, if they are satisfied that any of the conditions upon which the licence is granted are not being complied with, suspend or revoke the licence, but the licence shall not be suspended or revoked before the licensing authority have served on the holder a notice stating the grounds on which it is proposed to suspend or revoke the licence, and the holder shall be afforded a reasonable opportunity of making such representations to the authority in regard thereto as he thinks fit:

Provided that a producer's licence shall not be suspended or revoked by reason only of his milk being found not to comply with the conditions of the licence after it has left his custody and control if he proves that such non-compliance was not due to any act or default of himself or of his servants or agents.

(2) Where application for a licence has been made to or a licence has been granted by any licensing authority other than the Minister, a person aggrieved by a decision of the

licensing authority to refuse or to suspend or revoke a licence may within seven days after receiving notice of such decision appeal to the Minister, whose decision shall be final, and the licensing authority shall comply with the decision of the Minister. In any appeal any reference in this Order to anything being to the satisfaction of the licensing authority or subject to their approval shall be treated as if the reference were to the satisfaction or approval of the Minister. Pending the final determination of any appeal from a decision to suspend or revoke a licence, the licence shall continue to have effect.

(For penalties (other than suspension or revocation of the licence), see s. 9 of the Act of 1922, *ante*, p. 195.)

10. A licensing authority may delegate to a committee of the authority, with or without restrictions or conditions as they think fit, all or any of their powers uncer this Order.

11. Two or more licensing authorities may concur in appointing out of their respective bodies a joint committee for carrying out their duties under this Order and in conferring with or without restrictions on any such committee any powers which the appointing authorities might exercise for the purpose, and the provisions of Sections 57 and 58 of the Local Government Act, 1894 (*a*), in regard to joint committees shall, with the necessary modifications, apply to any joint committee so appointed.

(*a*) 56 & 57 Vict. c. 73.

12. Notwithstanding anything contained in this Order, a licence permitting a producer to sell milk produced by him as " Certified " shall entitle him to sell such milk as " Grade A (Tuberculin tested) " or as " Grade A."

13. Where milk has been sold by a dealer who is licensed in Scotland to sell milk under any special designation, this Order shall apply to the subsequent sale of that milk in England or Wales in the same manner as if such dealer had sold by virtue of a licence granted under the provisions of this Order.

FIRST SCHEDULE.

FORM A.

MILK (SPECIAL DESIGNATIONS) ORDER, 1922.

Producer's Licence to sell Milk as "Grade A" (a).

The , with the authority of the Minister of Health, hereby licence of to sell under the designation "Grade A" milk produced at .

This licence is not transferable and is subject to the terms and conditions prescribed in the Milk (Special Designations) Order, 1922, and unless previously revoked will operate until the 31st day of December, 192 .

This licence does not authorise the holder to sell milk under the above-named designation outside the area of the licensing authority except by wholesale.

Dated this day of , 192 .

Clerk to the Council.

(a) Similar forms with appropriate modifications are to be used for licences for the sale of "Certified" and "Grade A (Tuberculin tested)" milk.

FORM B.

MILK (SPECIAL DESIGNATIONS) ORDER, 1922.

Dealer's Licence to sell Milk as "Grade A" (a).

The , with the authority of the Minister of Health, hereby licence (referred to herein as the dealer) of to sell at or from under the designation "Grade A" milk purchased by the dealer *[in bottles] as "Grade A" from a person duly licensed to sell it under that designation *[and bottled by the dealer at].

This licence is not transferable and is subject to the terms and conditions prescribed in the Milk (Special Designations) Order, 1922, and unless previously revoked will operate until the 31st day of December, 192 .

This licence does not authorise the holder to sell milk

under the above-named designation outside the area of the licensing authority except by wholesale.

Dated this day of , 192 .

Clerk to the Council.

* Strike out whichever words are inapplicable.

(*a*) Similar forms with appropriate modifications are to be used for licences for the sale of "Certified," "Grade A (Tuberculin tested)" and "Pasteurised" milk.

FORM C.

MILK (SPECIAL DESIGNATIONS) ORDER, 1922.

Pasteuriser's Licence to sell Milk as "Pasteurised."

The , with the authority of the Minister of Health, hereby licence of to sell under the designation "Pasteurised" milk which has been treated by the pasteurising process in accordance with the conditions upon which this licence is granted at .

This licence is not transferable and is subject to the terms and conditions prescribed in the Milk (Special Designations) Order, 1922, and unless previously revoked will operate until the 31st day of December, 192 .

This licence does not authorise the holder to sell milk under the above-named designation outside the area of the licensing authority except by wholesale.

Dated this day of , 192 .

Clerk to the Council.

FORM D.

Supplementary Licence to sell Milk as "Grade A" (a).

The , with the authority of the Minister of Health, hereby licence of (referred to herein as "the dealer"), being the holder of the licence (referred to herein as the principal licence) dated and granted by to which this supplementary licence is* appended, to sell by retail from the premises specified in the said licence under the designation "Grade A" milk purchased by the dealer [in bottles]† [and bottled by the dealer] in accordance with the terms of the principal licence.

This supplementary licence is subject to the terms and conditions prescribed in the Milk (Special Designations)

Order, 1922, and unless previously revoked will operate during the currency of the principal licence.

It does not authorise the holder to sell milk under the above-named designation outside the area of the licensing authority.

Dated this day of , 192 .

Clerk to the Council.

* If preferred the licence may be endorsed on the principal licence.

† Strike out whichever words are inapplicable.

(*a*) Similar forms with appropriate modifications are to be used for licences for the sale of " Certified," " Grade A (Tuberculin tested) " and " Pasteurised " milk.

SECOND SCHEDULE.

GENERAL CONDITIONS SUBJECT TO WHICH LICENCES MAY BE GRANTED.

(1) The arrangements and processes under and by which the milk is produced, stored, treated and distributed, as the case may be, shall be such as to satisfy the licensing authority that the conditions subject to which the licence is granted are being and will be complied with.

(2) The holder of the licence shall—

(a) take such measures as the licensing authority may require to ensure that the milk in respect of which the use of a special designation is authorised shall be kept separate at all stages from all other milk ;

(b) keep accurate records of the quantities of milk produced, purchased and sold, as the case may be, and of the names and addresses of the persons from whom the milk was purchased and to whom it was sold otherwise than by retail ;

(c) permit any person duly authorised by the licensing authority—

(i.) to inspect the processes of production, storage and treatment.

(ii.) to take samples of the milk free of charge, and

(iii.) to inspect any records which the holder is required by the conditions of the licence to keep.

THIRD SCHEDULE.

PART I.

CONDITIONS SUBJECT TO WHICH LICENCES FOR SELLING MILK AS "CERTIFIED" MAY BE GRANTED.

A.—*The following conditions apply to producers only :—*

(1) (a) The producer shall cause every animal of the herd to be examined once in every three months and shall produce to the licensing authority the veterinary surgeon's certificate within seven days after the date of the certificate.

(b) The producer shall cause the tuberculin test to be applied to every animal of the herd at intervals of six months, and shall produce to the licensing authority the certificate of the tuberculin test within seven days after the date of the certificate, and shall not permit the injection of tuberculin on any other occasion ;

(c) No animal shall be added to the herd unless it has been submitted either by the holder of the licence or by some other producer of "Certified" milk to the tuberculin test within the period of three months next before it is so added ;

(d) Where any animal is certified as showing evidence of any disease which is likely to affect the milk injuriously or as reacting to the tuberculin test, it shall forthwith be removed from the herd or shall not be added to the herd, as the case may be, and where an animal is so removed on account of any such disease the producer shall inform the licensing authority how it has been disposed of ;

(e) A suitable system shall be adopted for the marking for purposes of identification of the animals in the herd, and a complete register of such animals shall be kept ; and

(f) The herd shall be completely isolated from all other cattle.

(2) The milk shall be bottled on the farm immediately after production.

(3) Every bottle containing the milk shall be closed with a suitable tightly fitting disc and covered with a suitable outer cap overlapping the lip of the bottle and so fastened as to form a complete seal. The cap shall bear the name and address of the producer or of the dairy where the milk is produced, the day of production and the words "certified

milk." The words "produced from cows which have passed the tuberculin test" may be added, but, except with the consent of the licensing authority, the cap shall bear no other words.

B.—*The following conditions apply to all holders of licences to sell milk as "Certified" :—*

(1) The milk shall not be removed from the bottles or the seals broken before delivery to the purchaser;

(2) On a sample being taken at any time before delivery to the consumer the milk shall be found not to contain :—

(a) more than 30,000 bacteria per cubic centimetre, nor

(b) any bacillus coli in one-tenth of a cubic centimetre.

(3) The milk shall not at any stage be treated by heat.

PART II.

CONDITIONS SUBJECT TO WHICH LICENCES FOR SELLING MILK AS "GRADE A (TUBERCULIN TESTED)" MAY BE GRANTED.

(1) The conditions shall be those set out in Part III. of this Schedule with regard to "Grade A" milk, and, in addition, in the case of producers the conditions set out in paragraph (1) of sub-division A of Part I. of this Schedule.

(2) The milk shall not at any stage be treated by heat.

PART III.

CONDITIONS SUBJECT TO WHICH LICENCES FOR SELLING MILK AS "GRADE A" MAY BE GRANTED.

A.—*The following conditions apply to producers only :—*

(1) The producer shall cause every animal of the herd to be examined once in every three months, and shall produce to the licensing authority the veterinary surgeon's certificate within seven days after the date of the certificate.

(2) Where any animal is certified as showing evidence of any disease which is likely to affect the milk injuriously, it shall forthwith be removed from the herd, and the producer shall inform the licensing authority how it has been disposed of; and if at any time it is shown to the satisfaction of the licensing authority that tubercle bacillus is contained in the milk, the producer shall take all necessary steps to ascertain

which animals are diseased and to remove them from the herd, and shall inform the licensing authority how such animals have been disposed of.

(3) A suitable system shall be adopted for the marking for the purposes of identification of the animals of the herd, and a complete register of such animals shall be kept.

(4) The herd shall be kept separate from all other cattle

(5) Except where the milk is bottled by the producer in accordance with the procedure for bottling hereinafter specified, the milk shall be consigned from the dairy where it is produced in an unventilated sealed container which shall be labelled or marked in a suitable manner with the address of the dairy, the day of production (with the word " morning " or " evening " according to the time of milking), and the words " Grade A Milk."

B.—*The following conditions apply to persons other than producers :—*

(1) Except where the milk is delivered to the consumer in the containers in which it is received, the seals being unbroken, it shall be delivered either in bottles or in other suitable containers of not less capacity than two gallons.

(2) Every bottle containing the milk shall be closed with a suitable tightly fitting disc and covered with a suitable outer cap overlapping the lip of the bottle and so fastened as to form a complete seal. The cap shall bear the name of the dealer by whom the milk was bottled, and the address of the licensed bottling establishment, the words " Grade A Milk " and the day of production and shall except with the consent of the licensing authority bear no other words. Where containers other than bottles are used, every container shall be closed with a tightly fitting cover and shall be suitably sealed and labelled.

C.—*The following conditions apply to all holders of licences to sell milk as " Grade A " :—*

(1) The milk shall be produced and treated under such conditions that on a sample being taken at any time before delivery to the consumer the milk shall be found not to contain :—

(a) more than 200,000 bacteria per cubic centimetre, nor

(b) any bacillus coli in one-hundredth of a cubic centimetre.

(2) The milk shall not at any stage be treated by heat unless a licence to sell such milk as " Pasteurised " has been granted under this Order, and where such a licence has been granted the term " Pasteurised " shall be added after the designation " Grade A Milk " wherever such designation is used in connection with the sale of such milk or the labelling or marking of receptacles containing such milk.

PART IV.

CONDITIONS SUBJECT TO WHICH LICENCES FOR SELLING MILK AS " PASTEURISED " MAY BE GRANTED.

(1) The milk shall be pasteurised, that is to say, retained at a temperature of not less than 145° and not more than 150° Fahrenheit for at least half an hour, and be immediately cooled to a temperature of not more than 55° Fahrenheit.

(2) The milk shall not be so heated more than once and shall not be otherwise treated by heat.

(3) The type of apparatus used for pasteurising and the methods employed shall be such as are satisfactory to the licensing authority.

(4) Every vessel containing the milk shall bear a suitable label with the words " Pasteurised Milk " and the day of pasteurisation.

(5) On a sample of the milk being taken at any time after pasteurisation and before delivery to the consumer, the milk shall be found not to contain :—

(a) more than 30,000 bacteria per cubic centimetre, nor

(b) any bacillus coli in one-tenth of a cubic centimetre :

Provided that at any time before the 1st day of January, 1924, the requirements of this paragraph shall be deemed to be satisfied, if on a sample being taken as aforesaid the milk is found not to contain more than 50,000 bacteria per cubic centimetre.

The following paragraph has been added to this Schedule by the Milk (Special Designations) Amendment Order, 1922, dated December 18th, 1922 (S. R. & O., 1922, No. 1357) :—

(6) Until the 1st day of July, 1923, the requirements contained in paragraphs (1) and (2) of these conditions shall

be deemed to be satisfied if the milk is treated not more than once by a suitable heating process and immediately cooled to a temperature of not more than 55° Fahrenheit.

FOURTH SCHEDULE.

FEES PAYABLE FOR LICENCES.

For a Licence to sell Milk as "Certified."

	£	s.	d.
Licence in respect of the establishment at which the milk is produced . . .	5	0	0
Licence in respect of the shop or other premises (not being such establishment as aforesaid) at or from which the milk is sold	0	5	0
Supplementary licence to sell milk from premises which are outside the area of the licensing authority	0	2	0

For a Licence to sell Milk as "Grade A (Tuberculin tested)" or "Grade A."

Licence in respect of the establishment at which the milk is produced . . .	1	1	0
Licence in respect of the establishment (whether the establishment at which the milk is produced or not) at which the milk is bottled	2	2	0
Licence in respect of the shop or other premises (not being the establishment at which the milk is produced or bottled) at or from which the milk is sold . .	0	5	0
Supplementary licence to sell milk from premises which are outside the area of the licensing authority	0	2	0

For a Licence to sell Milk as "Pasteurised."

Licence in respect of the establishment in which the process of pasteurising is carried on	1	1	0

	£	s.	d.
Licence in respect of the shop or other premises at or from which the milk is sold where the seller is not the person who holds the licence in respect of the pasteurising establishment	0	5	0
Supplementary licence to sell milk from premises which are outside the area of the licensing authority	0	2	0

Given under the Official Seal of the Minister of Health this ninth day of December, in the year one thousand nine hundred and twenty-two.

(L.S.) A. B. MACLACHLAN,
Assistant Secretary,
Ministry of Health.

PRESERVATIVES AND COLOURING MATTERS.

The Departmental Committee on the use of preservatives and colouring matters in food in their report, dated 1901, recommended :—

(a) That the use of formaldehyde or formalin, or preparations thereof, in foods or drinks be absolutely prohibited, and that salicylic acid be not used in a greater proportion than 1 gr. per pint in liquid food and 1 gr. per pound in solid food. Its presence in all cases to be declared.

(b) That the use of any preservative or colouring matter whatever in milk offered for sale in the United Kingdom be constituted an offence under the Sale of Food and Drugs Acts.

(c) That the only preservative which it shall be lawful to use in cream be boric acid or mixtures of boric acid and borax, and in amount not exceeding 0·25 per cent expressed as boric acid. The amount of such preservative to be notified by a label upon the vessel.

(d) That the only preservative permitted to be used in butter and margarine be boric acid or mixtures of boric acid and borax, to be used in proportions not exceeding 0·5 per cent., expressed as boric acid.

(e) That in the case of all dietetic preparations intended for the use of invalids or infants chemical preservatives of all kinds be prohibited.

(f) That the use of copper salts in the so-called greening of preserved foods be prohibited.

MILK PROSECUTIONS.

MINISTRY OF HEALTH,
WHITEHALL, S.W. 1.
17*th July*, 1922.

SIR,—I am directed by the Minister of Health to state that his attention has been called to a case in which a milk vendor was prosecuted for selling milk deficient in fat, and on the case coming before the Court, it was shown that the vendor had held a good record for a number of years and that during that period constant tests had given uniformly satisfactory results. It was further shown that special circumstances existed to account for the milk being deficient in fat on the occasion of the test on which the prosecution was based. As soon as the local authority became aware of the facts of the case they withdrew the prosecution.

The Minister fully appreciates that in order to prevent the systematic selling of milk deficient in fat, local authorities will often be compelled to institute proceedings against vendors who sell milk containing less than the proper amount of fat; but at the same time he feels that local authorities would desire to avoid a course of action calculated to cause irritation to those vendors who are doing their best to secure that the milk they sell is of good quality. He is advised that conditions of a purely temporary character may on occasion cause the milk from cows which normally give milk of the proper fat content, to be below the limit laid down in the Sale of Milk Regulations, and that the results of an isolated test cannot be regarded as conclusive evidence that the milk in question is in general below this limit. The Minister is therefore of opinion that it is extremely undesirable that a prosecution should be based upon the results of an isolated test when other tests of the particular milk supply have proved satisfactory, and I am to suggest for the

consideration of the local authority that in such cases prosecutions should be instituted only where a series of tests have shown repeated default.

I am, Sir, your obedient Servant,
A. B. MACLACHLAN,
Assistant Secretary.

The Clerk of the Council, *or*
The Town Clerk.

SALE OF FOOD AND DRUGS ACTS.

PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912 AND 1917.

MINISTRY OF HEALTH,
WHITEHALL, S.W. 1.
22*nd December*, 1922.

SIR,—1. I am directed by the Minister of Health to request that a copy of the report of the Public Analyst for the fourth quarter of 1922 and a copy of a report by the Medical Officer of Health on the administration of the Public Health (Milk and Cream) Regulations during 1922 may be forwarded to the Department during the month of January. It is requested that in preparing such reports the lines indicated in the memorandum (36/Foods) enclosed with the Department's Circular letter No. 162 of the 7th January, 1921, may continue to be followed. In this connection I am to draw special attention to paragraph 4 of that memorandum relating to " appeal to cow " samples, and to state that inconvenience has been caused in a number of cases by such samples not being clearly distinguished. I am also to refer to paragraph 3 of the memorandum and to say that the Minister would be glad to receive information as to action taken under section 4 of the Milk and Dairies (Amendment) Act, 1922.

2. A pamphlet similar to that issued last year containing a reprint of the section of the Ministry's Annual Report for 1921–1922 relating to the Administration of the Sale of Food and Drugs Acts, together with certain additional tables, was

published in August last. Copies may be obtained from His Majesty's Stationery Office, either directly or through any bookseller, price 1*s.* 6*d.*

3. It is understood that the Board of Trade have notified Local Authorities of the amendments made in the various Food Control Orders, but it may be convenient to note here that the only provisions of those Orders enforceable by Sale of Food and Drugs Acts Authorities as such which will remain in operation after the 1st January, 1923, are those relating to the labelling of Imported Meat, which are continued in force until 31st December, 1923, by the Expiring Laws Act, 1922.

4. The Bread Acts Amendment Act, 1922, is designed to legalise the manufacture of such articles as Self-raising Flour and Cake Mixtures, which it was thought might be held to be prohibited under the Acts of 1822 and 1836. The new Act specifically provides that nothing therein shall prejudice or affect the operation of the Sale of Food and Drugs Acts, and power is also given to the Minister to make regulations for prohibiting or restricting the use of undesirable ingredients. The Minister has not yet made any such regulations, and he would be glad to be informed of any instance in which the use of undesirable ingredients has been discovered which cannot be adequately dealt with under existing legislation.

I am, Sir, your obedient Servant,

A. B. MACLACHLAN,
Assistant Secretary.

The Clerk of the Council, *or*
The Town Clerk.

PASTEURISED MILK.

MINISTRY OF HEALTH,
WHITEHALL, S.W. 1.
19*th December*, 1922.

SIR,—I am directed by the Minister of Health to refer to Circular 356 of the 12th instant, enclosing a copy of the Milk (Special Designations) Order, 1922, and to state that repre-

sentations have since been made to him on behalf of persons who have been in the habit of selling milk as "Pasteurised" and who are prepared in the future to treat their milk in accordance with the conditions specified in Part IV. of the Third Schedule to the Order.

It has been stated that in many cases it will be impossible for such persons to instal the necessary apparatus to enable them to obtain a licence to sell milk as "Pasteurised" under the Order by the 1st January next, and that in view of existing contracts and otherwise, the forced interruption in the use of the designation "Pasteurised" would have an unfortunate effect on their trade. In view of these representations the Minister has issued an amending Order, a copy of which is enclosed herewith, relaxing for a period of six months so much of the principal Order as limits the use of the designation "Pasteurised" to milk which has been treated by the process specified in paragraph (1) of Part IV. of the Third Schedule to that Order.

Licences may therefore be issued for the sale as "Pasteurised" milk of milk which has been treated not more than once by any suitable heating process which makes it capable of complying with the prescribed bacterial test. In view of the terms of Article 5 (2) of the principal Order such licences must be granted so as to operate until the 31st December, 1923, but the provisions of Article 9 of that Order as to suspension and revocation will apply on the 1st July if the licensee has not by that time installed the plant necessary for compliance with condition (1) of Part IV. of the Third Schedule to the principal Order.

The amending Order and this Circular will be placed on sale, and further copies may be obtained through any bookseller or directly from His Majesty's Stationery Office at the addresses shown below.

I am, Sir, your obedient Servant,

A. B. MACLACHLAN,

Assistant Secretary.

The Town Clerk, *or*
The Clerk to the Council.

MILK AND DAIRIES (AMENDMENT) ACT, 1922.

MINISTRY OF HEALTH,
Whitehall, S.W. 1.
12*th December*, 1922.

SPECIAL DESIGNATIONS.

SIR,—I am directed by the Minister of Health to refer to the observations contained in Circular 335 with regard to Section 3 of the Milk and Dairies (Amendment) Act, 1922, and to enclose for the information of the Council a copy of the Milk (Special Designations) Order, 1922, prescribing the terms and conditions subject to which licences may be granted for the sale of milk as "Certified," "Grade A (Tuberculin Tested)," "Grade A," or "Pasteurised."

The Order provides for the issue of licences as follows :—

(1) By County and County Borough Councils (and in certain circumstances by Urban and Rural District Councils) to Producers of "Grade A" Milk.

(2) By Sanitary Authorities to

(a) Distributors of "Certified" Milk.

(b) Distributors of "Grade A" Milk, including "Grade A (Tuberculin Tested)" and "Grade A (Pasteurised)."

(c) Distributors of "Pasteurised" Milk.

(NOTE.—A licensed producer who distributes his milk to consumers direct from the farm will not require a licence from the Sanitary Authority.)

The Minister will for the present issue licences to producers of "Certified" and "Grade A (Tuberculin Tested)" Milk, who will be entitled to sell the milk, produced under such licences as "Grade A" Milk without further licence from a Local Authority.

The Minister is advised that the conditions now prescribed for "Grade A" Milk are such as should provide milk that is superior to the ordinary milk of the country and reasonably safe under all ordinary circumstances, and at the same time bring the production and distribution of the milk within the competence of all careful dairymen.

PROCEDURE OF COUNTY COUNCILS.

On receipt of an application from a farmer for a licence to sell "Grade A" milk, it will be necessary for the County Council to nominate a Veterinary Surgeon to examine the herd, and until further notice the Minister concurs in the nomination of any person for the time being holding the appointment of Local Veterinary Inspector of the Ministry of Agriculture and Fisheries or the appointment of Veterinary Inspector to a Local Authority under the Diseases of Animals Acts, without reference to the Minister. If in any case it is considered desirable to nominate a Veterinary Surgeon who does not hold either of these appointments a special request should be made for the concurrence of the Minister.

It is also desirable that the County Council, on receiving such an application, should require the applicant to have one or more samples of his milk submitted to bacteriological examination at his own expense, and should satisfy themselves that the results of the examinations are such as to make it reasonably probable that the milk will comply with the prescribed tests at the time of distribution.

Where the producer delivers milk to the consumer direct from the farm it will be necessary for the County Council also to issue the distributor's licence and to exercise or arrange for the exercise of the functions of a Sanitary Authority with regard to such milk.

PROCEDURE OF SANITARY AUTHORITIES.

The action to be taken by a Sanitary Authority on receipt of an application from a distributor for a licence will depend on the designation proposed to be used. In every case except that of "Pasteurised" Milk it will be necessary for them to ascertain the source of supply and then to satisfy themselves that the corresponding licence has been issued to the producer.

In the case of "Certified" Milk a licence may ordinarily be issued without further enquiry.

In the case of "Grade A (Tuberculin Tested)" or "Grade A" Milk the Authority must verify that the distributor has an efficient arrangement for bottling, and that, until after

bottling, the milk is being dealt with in a part of the premises separate from other milk. The Authority should also arrange for an examination of the caps and seals proposed to be used, and should require the applicant to have one or more samples of the milk submitted to bacteriological examination at his own expense.

Apart from procedure in connection with new licences, the principal function of a Sanitary Authority will be to take samples of milk from time to time and arrange for them to be submitted to bacteriological examination. The Minister should be informed of the laboratories to which it is proposed to send the samples, and of the estimated cost. In taking samples of " Certified " Milk the Authority will be acting as agents for the Minister, who will require to be satisfied as to the arrangements proposed and will repay the approved cost of the examinations. The Minister thinks it desirable that samples of " Certified " Milk should be taken on the average at the rate of about one sample a month for each producer, the samples generally being taken from time to time from all the distributors concerned. A set of instructions as to the taking and testing of samples will be issued shortly.

When an unfavourable report is received with regard to a sample of " Grade A (Tuberculin Tested) " or " Grade A " Milk the special attention of the distributor should be drawn to the matter, and he should be advised to take steps to discover the cause of the defect and to remedy it if it is due to any default of his own, or to arrange with the producer to do so if the latter is responsible. If a further unfavourable report is received, it will be necessary for the Authority to consider whether they should take steps under Article 9 of the Order to suspend or revoke the licence, and in this connection it may be observed that a distributor who cannot deliver milk that regularly satisfies the prescribed tests is not entitled to hold a licence, even though the failure may be due to the conditions of his source of supply, and not to any fault of his own.

Notwithstanding the precautions taken in the examination of the herd it may occasionally happen that tubercle bacillus is found in milk of any grade. If this should at any time be reported, full information should at once be given to the Minister or the County Council, as the case may be, who will inform the producer and require him to take steps to ascer-

tain which animals are affected and to remove them from the herd. The steps taken would generally include bacteriological examinations of the milk of individual cows or groups of cows, and the licensing authority will no doubt facilitate the enquiry by arranging, where necessary, for the bacteriological examinations at an appropriate charge.

"PASTEURISED" MILK.

The Order lays down the general conditions governing the sale of milk as "Pasteurised," the essential condition in the matter of treatment being that the milk must be held at a temperature between 145° and 150° Fahrenheit for a period of at least half an hour. It is desirable for purposes of control that every pasteurising plant should be provided with an automatic recording apparatus.

The prescribed conditions definitely exclude the "flash pasteurisation" process by which milk is heated to a high temperature (*e.g.*, 170°) for a short period. But it is also to be observed that the apparatus must be such that all the milk is held for the prescribed period, and in examining other types of pasteurisers, it will be for the Licensing Authority to determine whether the prescribed conditions are complied with. The Minister is advised that no process except that which is commonly known as the "positive holder" process has yet been shown to satisfy these conditions.

In laying down the nature of the process which is for the present to be recognised as pasteurisation the Minister wishes to make it clear that he will at any time be prepared to consider the question of making a further Order extending the definition of the term so as to embrace any other pasteurising process which can be shown to produce similar results in regard both to the destruction of pathogenic and other bacteria and to the preservation of the original properties of the milk.

GENERAL.

The Order prescribes the amounts of the fees payable for the various licences. These fees will be paid to the Authorities by which the relative licences are issued, and they have been fixed at such amounts as may be expected on the average to cover the expenditure of Licensing Authorities under the Order. But it should be understood that the

amounts of the fees will be reconsidered and if necessary revised when sufficient experience has been gained of the working of the scheme.

It will be seen that Section 3 of the Act makes it an offence in certain circumstances to describe or refer to milk by a prescribed designation *except under and in accordance with a licence*. It would appear therefore that legal proceedings might be taken against a licensee who sold milk under such a designation contrary to the conditions governing his licence, but it seems to the Minister that as a general rule such a contravention would best be dealt with by the revocation of the licence, though a prosecution might be desirable in an especially flagrant case. The section would, however, be appropriate for enabling proceedings to be instituted against a person who uses a prescribed designation without a licence. Under Section 10 the power of taking proceedings for such an offence is conferred both on the County Council and on the Sanitary Authority. It is thought, however, that such proceedings would most conveniently be taken by the Authority having power to issue or refuse the licence or, where such power is retained by the Minister, by the Authority exercising functions under the Sale of Food and Drugs Acts.

I am to add that the Minister will be pleased to assist Local Authorities in making their arrangements in connection with licences, and he would be glad to receive, during the next year, statements at intervals of three months, showing the numbers of licences of each kind which have been issued. Lists of the persons at present licensed by the Minister to sell graded Milk are being prepared for every area, and the appropriate list will be sent to every Licensing Authority in whose area any person is so licensed, as it may be expected that applications will be received from such persons. As the Order will come into operation on the 1st January, 1923, licences in these cases may at once be issued, having effect as from that date. It is not necessary that an application for a licence should be in any special form, but it will probably be found convenient for all parties that suitable forms should be issued and used. Copies of suggested forms suitable for ordinary cases are contained in the appendix to this Circular, together with a copy of the approved form of Veterinary Surgeon's Certificate.

Further copies of this Circular and of the Order may be obtained through any bookseller or directly from H. M. Stationery Office.

I am, Sir, your obedient Servant,
A. B. MACLACHLAN,
Assistant Secretary.

The Town Clerk, *or*
The Clerk to the Council.

APPENDIX.

FORM A.

APPLICATION FORM FOR A LICENCE TO USE THE DESIGNATION "GRADE A" MILK.

(To be filled in by the Producer and sent to the Clerk to the Licensing Authority.)

I hereby apply for a Licence to use the designation "Grade A" in connection with the sale of milk produced by me at .
I enclose a remittance for being the prescribed licence fee.*
Signature .
Address .

Date .

Nearest Railway Station to farm .
Distance thereto .
Times of milking a.m. p.m.

If the milk is to be bottled by the applicant, state address at which this will be done.*

If milk is sold wholesale, state name and address of purchaser.

FORM B.

APPLICATION FORM FOR A LICENCE TO USE THE DESIGNATION "CERTIFIED," "GRADE A (TUBERCULIN TESTED)" OR "GRADE A" MILK.

(To be filled in by the Dealer and sent to the Clerk to the Licensing Authority.)

I hereby apply for a licence to use the designation Milk
(fill in designation of licence required.)
I enclose a remittance for being the prescribed licence fee.†
Signature .
Address .

Date .

---

* The licence fee is 1*l.* 1*s.* 0*d.* and an additional fee of 2*l.* 2*s.* 0*d.* is payable in respect of every address at which the milk is bottled by the applicant.

† If Grade A (Tuberculin Tested) or Grade A milk is bottled by the

The particulars indicated below are required :—

(a) If the application is for a licence to sell Certified Milk. — Address at which milk will be sold* .

(b) If the application is for a licence to sell Grade A (Tuberculin Tested) or Grade A Milk. — (1) Address at which milk will be bottled* . (2) Address at which milk will be sold* .

In space provided below give following particulars :—

Name.	Address.	Railway Station from which Milk will be despatched.
of producer from whom milk will be purchased.		

If it is proposed to sell the milk wholesale, give particulars indicated below.

Name.	Address.	Railway Station from which milk will be despatched.
of the purchaser.		

applicant, a fee of 2*l.* 2*s.* 0*d.* is payable in respect of every address at which this is done. This is inclusive of the fee for the licence to sell the milk at these premises.

If the milk is sold elsewhere the additional licence fees will be :—

5*s.* for a licence to sell Certified Milk
5*s.* for a licence to sell Grade A (Tuberculin Tested) Milk - -
5*s.* for a licence to sell Grade A Milk

} in respect of each address at which the milk is sold.

* Every address at which milk is to be bottled or sold must be stated.

FORM C.

APPLICATION FORM FOR A LICENCE TO USE THE DESIGNATION "PASTEURISED" MILK.

(To be filled in by the Dealer and sent to the Clerk to the Licensing Authority.)

I hereby apply for a Licence to use the designation "Pasteurised" milk in connection with the sale of milk treated by me at .

I enclose a remittance for £1 1*s.* 0*d.*, being the prescribed licence fee.

Date .

Signature .

Address .

If milk is sold wholesale, state names and addresses of purchasers below.

Names.	Addresses.
of the purchasers.	

FORM D.

VETERINARY SURGEON'S CERTIFICATE.

NOTES.

(1) An examination of the herd must be made once in every three months by a member of the Royal College of Veterinary Surgeons who has been nominated for the purpose by the Licensing Authority (*i.e.*, the Minister of Health or the County or County Borough Council, as the case may be).

(2) The Veterinary Surgeon must make a careful clinical examination of every animal in the herd, and must certify the result of the examination in the form set out below.

(3) The Certificate (including the schedule) should be made out in duplicate; one copy to be given to the owner of the herd, or his agent, and the other to be sent to the Licensing Authority within seven days of the completion of the examination.

CERTIFICATE OF VETERINARY SURGEON.

Name of owner of herd .

Address of farm or premises .

Post Town . County .

Total number of cows and heifers in herd .

"I have this day examined the above herd, and after submitting each animal separately to a clinical examination, certify that no animal in

the herd is affected with, or shows symptoms indicative of, any of the following pathological conditions :—

Tuberculosis of the Udder, Indurated Udder, Enlargement of Supra-Mammary Lymphatic Glands, Tuberculosis in any form with Emaciation, Chronic Cough with definite Clinical Symptoms of Tuberculosis, Anthrax, Foot and Mouth Disease, Mastitis, Abscess of the Udder, or Retained Placenta.

with the exception of * animals described in the Schedule.

Signature of Veterinary Surgeon .

Address .

Date .

SCHEDULE.

Identification Mark of Affected Animal.	Pathological Conditions as specified in Certificate.	Degree (Very Marked, Marked, Slight.)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

GENERAL REMARKS.†

* Here insert number. If none, delete this line.

† Under this heading particulars should be given regarding any animals in the herd affected with pathological conditions which might be of interest to public health, such as lesions on the teats, or generalised diseased conditions.

MEMORANDUM OF THE MINISTRY OF HEALTH, JANUARY, 1923.

SALE OF MILK UNDER SPECIAL DESIGNATIONS.

"CERTIFIED"—"GRADE A (TUBERCULIN TESTED)"—"GRADE A"—"PASTEURISED."

GENERAL.

1. Under section 3 of the Milk and Dairies (Amendment) Act, 1922, the designations "Certified Milk," "Grade A Milk," "Pasteurised Milk" and other similar designations may only be used where a licence to sell milk under those designations has been granted by the Minister of Health or with his authority. Licences are required in the case of either "Certified," "Grade A (Tuberculin Tested)," or "Grade A" Milk, both by the farmer who produces the milk and by every dealer who sells it. In the case of "Pasteurised" Milk a licence is required by the person who pasteurises it and by any other dealer who sells the milk.

Licences, expiring annually on the 31st December, are granted by the appropriate Licensing Authority as stated at the beginning of each numbered paragraph below, subject to the conditions and upon the payments set out below. Separate licences are required for the use of each designation and separate fees are payable.*

Separate licences are required for each district † in which milk is retailed, and a separate fee is payable for each establishment. If a retailer wishes to sell milk in one district from a licensed establishment in another district, he can obtain a supplementary licence from the Authority for the first district for an additional fee of 2*s*.

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* The only exceptions are that a producer holding a "Certified Milk" licence may sell milk produced in accordance with the conditions of the licence as "Grade A (Tuberculin Tested)" or "Grade A," and the holder of a "Grade A (Tuberculin Tested) Milk" licence may sell milk produced in accordance with the conditions of that licence as "Grade A," in each case without any further licence or the payment of any further fee.

† *I.e.*, borough, urban district or rural district.

"CERTIFIED" MILK.

2. The Licensing Authority for the producer is the Minister of Health. The fee is 5*l*. The Licensing Authority for any other dealer is the District Council.* The fee is 5*s*. in respect of each establishment.

The conditions under which licences are granted for the sale of "Certified Milk" are as follows:—

(i.) A herd book or register of all the animals in the herd (showing additions and removals) must be kept and all the animals must be suitably marked for the purposes of identification.

(ii.) Every animal in the herd must have passed the tuberculin tests specified in the Appendix to this memorandum, before the licence is granted, and thereafter at intervals of six months. Every animal reacting to the tests must forthwith be removed from the farm.

No animal may be added to the herd unless it has passed the tests.

Tuberculin must not be used except for the purposes of the required tests.

(iii.) An examination of the herd must be made once in every three months by a Veterinary Surgeon nominated by the Minister. Any animal certified as showing evidence of any disease which may injuriously affect the milk must immediately be removed from the herd and information as to its disposal given to the Minister.

(iv.) Before a licence is issued the farm will be inspected and a satisfactory number of points must be obtained on the inspection report card.

(v.) The milk must be bottled on the farm immediately after production, for delivery to the consumer.

(vi.) Every bottle must be closed with a suitable tightly-fitting disc and covered with a suitable outer cap overlapping the lip of the bottle, and so fastened as to form a secure seal. This cap must bear the name and address of the producer or of the farm

* Or Town Council, or Metropolitan Borough Council as the case may be.

where the milk is produced, the day of production, and the words "CERTIFIED MILK."

The words "produced from cows which have passed the tuberculin test" may be added, but no other matter may be inserted except with the consent of the Minister.

(vii.) The milk at any time before delivery to the consumer must not contain Bacillus Coli in 1/10 c.c., and must not contain more than 30,000 bacteria per c.c.

(viii.) Accurate records must be kept by every producer and distributor in such a way that they can conveniently be checked. The producer's records must show the quantities of the milk produced and sold and the names and addresses of the purchasers. The distributor's records must show the quantities purchased and sold and the names and addresses of the persons from whom the milk is purchased and to whom it is sold otherwise than by retail.

(ix.) Every facility must be given at all times to any person authorised by the Licensing Authority to inspect the premises, processes of production, equipment, methods and records, and to take samples of the milk (free of charge).

"GRADE A (TUBERCULIN TESTED)" MILK.

3. The Licensing Authority for the producer is the Minister of Health. The Licensing Authority for the distributor is the District Council.*

The conditions as to the tuberculin testing of the herd which are set out in paragraph 2 (ii.) of this memorandum must be complied with. The conditions (including those as to fees) set out in paragraph 4 below with regard to the issue of licences for the sale of "Grade A Milk" also apply, except that the milk must not be pasteurised, and that the designation "Grade A (Tuberculin Tested)" is to be substituted for "Grade A" wherever those words occur.

"GRADE A" MILK.

4. The Licensing Authority for the producer is the Council

* Or Town Council or Metropolitan Borough Council as the case may be.

of the County or the County Borough (as the case may be) in which the milk is produced. The fee is 1*l.* 1*s.* Where a producer bottles his milk and retails it at or from the place of production and has no separate retailing premises, this Authority will grant a single inclusive licence to cover distribution as well as production, the fee for which is 3*l.* 3*s.* In other cases the Licensing Authority for the distributor is the District Council.* The fee is 2*l.* 2*s.* in respect of each bottling establishment. A fee of 5*s.* is payable in respect of each establishment where the milk is received already bottled and from which it is distributed intact.

The conditions under which licences are granted for the sale of "Grade A Milk" are as follows :—

(i.) A herd book or register of all the animals in the herd (showing additions and removals) must be kept and all the animals must be suitably marked for purposes of identification.

(ii.) An examination of the herd must be made once in every three months by a Veterinary Surgeon nominated by the Licensing Authority. Any animal certified as showing evidence of any disease which may injuriously affect the milk must immediately be removed from the herd and information as to its disposal given to the Licensing Authority.

(iii.) If tubercle bacillus is at any time found in the milk the producer must arrange for bacteriological examinations of the milk to be made so that the diseased animals may be identified and removed from the herd.

(iv.) The milk must be despatched from the farm in an unventilated sealed container, bearing a suitable descriptive label with the address of the farm, the day and time of production (morning or evening), and the words "GRADE A MILK."

(v.) The distributor must deliver the milk to the consumer either—

(a) In the vessels in which he has received it, the seals being unbroken ; or

* Or Town Council or Metropolitan Borough Council, as the case may be.

(b) In bottles* filled on the distributor's premises.

Every bottle must be closed with a suitable tightly-fitting disc and covered with a suitable outer cap overlapping the lip of the bottle and so fastened as to form a secure seal. This cap must bear the name and address of the distributor, the day of production, and the designation "GRADE A MILK" (or "GRADE A MILK (PASTEURISED)" as the case may be) and no other matter except with the consent of the Licensing Authority.

Until the milk has been bottled it must be kept entirely separate from all other milk.

(vi.) The milk at any time before delivery to the consumer must not contain Bacillus Coli in 1/100 c.c., and must not contain more than 200,000 bacteria per c.c.

(vii.) The milk may not be treated by any artificial heating process other than pasteurisation carried out in accordance with the conditions specified in paragraph 5 below, and if it is so pasteurised it must be sold as "Grade A Milk (Pasteurised)." It must then conform to the standard as regards bacterial content specified in paragraph 5 (iii.) below for pasteurised milk.

(viii.) Accurate records must be kept by every producer and distributor in such a way that they can conveniently be checked. The producer's records must show the quantities of the milk produced and sold and the names and addresses of the purchasers. The distributor's records must show the quantities purchased and sold and the names and addresses of the persons from whom the milk is purchased, and to whom it is sold otherwise than by retail.

(ix.) Every facility must be given at all times to any

* Where the milk is being delivered in large quantities (*e.g.*, to a school or hospital) cans holding two gallons or more may be used instead of bottles. Each can must be closed by means of a tightly-fitting cover and suitable seal.

person authorised by the Licensing Authority to inspect the premises, processes of production, equipment, methods and records, and to take samples of the milk (free of charge).

"PASTEURISED MILK."

5. The Licensing Authority is the District Council.* The fee is 1*l.* 1*s.* in respect of each pasteuring plant. A fee of 5*s.* is payable by any dealer in respect of each set of premises at or from which milk which has been pasteurised by some other dealer is sold as "Pasteurised Milk."

The conditions under which licences are granted are as follows, subject to the temporary relaxations stated in the footnotes to conditions (i.) and (iii.) respectively :—

(i.) The milk must be retained at a temperature of not less than 145° and not more than 150° Fahrenheit for at least thirty minutes, and must then be immediately cooled to a temperature of not more than 55° Fahrenheit.†

(ii.) The milk must not be otherwise treated by heat and must not be pasteurised more than once.

(iii.) The milk at any time after pasteurisation and before delivery to the consumer must not contain Bacillus Coli in 1/10 c.c. and must not contain more than 30,000 bacteria per c.c.‡

(iv.) Every vessel used for distributing the milk must be suitably labelled with the day of pasteurisation and the designation "PASTEURISED MILK."

(v.) Every facility must be given at all times to any person authorised by the Licensing Authority to inspect the premises, equipment and methods, and to take samples of the milk (free of charge).

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* Or Town Council or Metropolitan Borough Council, as the case may be.

† *Until the* 1*st July,* 1923, any process of pasteurisation (including the flash process) capable of effecting the necessary reduction of bacteria will be permitted. The condition as to immediate cooling must be observed.

‡ *Until the* 1*st January,* 1924, no test for Bacillus Coli will be imposed and the maximum bacterial content permitted will be 50,000 per c.c.

APPENDIX.

I.—Tuberculin Tests for "Certified" Milk and "Grade A (Tuberculin Tested)" Milk.

1. The producer must arrange with a Veterinary Surgeon nominated by the Minister to carry out the tests and to give the certificate and report specified below.

The producer must send all such certificates and reports to the Ministry (unless they are sent direct by the Veterinary Surgeon) within seven days of the date of the test and, in the case of an animal intended to be added to the herd, before it is added. The producer must within the same period send a declaration that every animal in the herd which is reported as reacting to the test has been removed.

2.—(a) The tests are to be carried out with fresh tuberculin of a satisfactory make. The name of the manufacturers of the tuberculin used and the quantity injected in each case should be stated on the test report sheet. The actual instructions supplied with the tuberculin used must be adhered to.

(b) The temperatures of all animals should be taken on three occasions at intervals of three hours shortly before the injections are made. The average of all temperatures within the physiological limits should be noted. Any animal persistently showing a temperature which is abnormal when compared with this average should not be included in the test, but should be tested as soon as its temperature becomes normal. No animal which has been injected with tuberculin within the previous three months may be included in the test.

(c) The hypodermic and ophthalmic tests should be applied simultaneously.

(d) After the injections, the temperature should be taken every three hours, beginning at the sixth hour and continuing until the eighteenth hour. If the temperature of any animal has shown little variation, but at the eighteenth hour shows distinct signs of rising, its temperature should be taken again after a further period of three hours. The result of the eye test should be recorded up to the eighteenth hour.

(e) The taking of the temperature may *only* be entrusted to an assistant if the assistant acts under the immediate personal supervision of the Veterinary Surgeon.

(f) (i.) A certificate should be given on the official form. The results observed in respect of each animal should be entered separately, the description of each animal including a reference to the identification mark or number (see paragraphs 2 (i.) and 4 (i.) of this memorandum).

(ii.) All temperatures, including the average specified in (b) above, and all changes noted in the eye should be reported on the form.

II.—GENERAL VETERINARY EXAMINATION FOR "CERTIFIED," "GRADE A (TUBERCULIN TESTED)," AND "GRADE A" MILK.

1. The producer must arrange with a Veterinary Surgeon nominated by the Licensing Authority to make a personal veterinary examination of the entire herd and to give the certificate and report specified below.

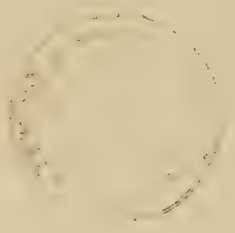
The producer must send all such certificates and reports to the Licensing Authority (unless they are sent direct by the Veterinary Surgeon) within seven days of the date of the examination. He must also within the same period remove from the herd any animal certified as suffering from any of the diseases specified below or from any other disease likely to affect the milk injuriously and inform the Licensing Authority how that animal has been disposed of.

2.—(a) The Veterinary Surgeon should make particular examination for any of the following diseases :—

(i.) Tuberculosis of the udder.
(ii.) Indurated udder.
(iii.) Enlargement of supra-maxillary lymphatic glands.
(iv.) Tuberculosis in any form with emaciation.
(v.) Chronic cough with definite clinical symptoms of tuberculosis.
(vi.) Anthrax.
(vii.) Foot and mouth disease.
(viii.) Mastitis.
(ix.) Abscess of the udder.
(x.) Retained placenta.

(b) A certificate should be given on the official form, specifying any clinical evidence of disease. The description of the animals given on this form should in every case include a reference to the identification mark or number (see paragraphs 2 (i.) and 4 (i.) of this memorandum).

MINISTRY OF HEALTH,
WHITEHALL, S.W. 1,
January, 1923.



SUPPLEMENT

TO

1927.

SUMMARY.

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I.—ADDITIONAL DECISIONS AND NOTES.

Sale of Food and Drugs Act, 1875, s. 6 (*ante*, p. 14).

"Prejudice of Purchaser."—The cases referred to in note (*c*) to s. 6 of the Sale of Food and Drugs Act, 1875, at pp. 14 *et seq.*, were again considered in *Preston* v. *Grant*, [1925] 1 K. B. 177; 88 J. P. 198; 94 L. J. K. B. 125; 132 L. T. 203; 41 T. L. R. 90; 69 Sol. J. 276; 23 L. G. R. 15; 27 Cox C. C. 672; and *Rodbourne* v. *Hudson*, [1925] 1 K. B. 225; 89 J. P. 25; 94 L. J. K. B. 129; 132 L. T. 444; 41 T. L. R. 132; 69 Sol. J. 275; 23 L. G. R. 22; 27 Cox C. C. 678.

In *Preston* v. *Grant* a publican, when asked by an inspector for whisky, sold whisky which was 42·26 degrees under proof. In the bar was a notice as follows: "All spirits sold in this establishment are diluted, and no alcoholic strength is guaranteed." The purchaser did not observe this notice and his attention was not drawn to it:—*Held*, by Lord HEWART, L.C.J., SHEARMAN and SALTER, JJ., that the exhibition of a notice which the purchaser did not see, and to which his attention was not drawn, did not suffice to rebut the presumption that the sale was to the prejudice of the purchaser. SHEARMAN, J., said: "No case interferes with the plain interpretation of s. 6 that the onus is on the seller, when an article is supplied which is not asked for, to show that notice reached the buyer in fact."

In *Rodbourne* v. *Hudson*, *supra*, the purchaser of rum saw and read a notice, exhibited in the public-house, in these terms: "All spirits sold at this establishment are of the same superior quality as heretofore, but to meet the requirements of the Food and Drugs Acts they are now sold as diluted spirits; no alcoholic strength guaranteed." On analysis the rum was found to be 41·5 degrees below proof:—*Held*, in a considered judgment by Lord HEWART, L.C.J., AVORY and SALTER, JJ., that there was evidence to justify the finding of the justices that the sale was to the prejudice of the purchaser, the Lord Chief Justice stating that he could not regard *Gage* v. *Elsey*, *ante*, p. 15, as an authority on the sufficiency of the notice. Lord HEWART in this case also said: "There are two questions: (1) What is the substance of the information which must be given to the purchaser? (2) Were the steps taken sufficient in all the circumstances to convey this information to an average purchaser? If the particular purchaser does not see, and is not made aware of, the notice, obviously the question of its sufficiency does not arise (see *Preston* v. *Grant*, *supra*). The first of the foregoing questions is a question of law, the second is a question of fact. As to (1), the purchaser must be told in substance that the thing which he is getting is not the thing he asked for. As to (2), the question is whether the notice is in such terms as would bring the required information to the mind of an average customer. In other words, the actual sufficiency of the notice is a question for the justices. The difficulty in some of the reported cases is that questions (1) and (2) may seem sometimes to have been a little confounded. No doubt, if the notice, properly construed, could not convey the necessary information, the justices would be wrong in law to acquit." He further expressed the opinion that the notice exhibited in this case was of grave and calculated ambiguity.

Sale of Food and Drugs Act, 1875, s. 6 (*ante*, p. 22).

The Article demanded.—In *Bowker* v. *Woodroffe* (*British Food Journal*, January, 1927), Lord HEWART, L.C.J., in sending the case back to the magis-

trate for restatement, said that in the absence of a specified standard in the Act (for meat and malt wine) the magistrate had the duty of laying down for himself a standard. This follows the decisions in *Roberts* v. *Leeming* and *Wilson and McPhee* v. *Wilson*, *ante*, p. 24.

Sale of Food and Drugs Act, 1875, s. 6 (*ante*, p. 24).

Milk.—Several cases not reported in any of the recognised reports have been before the Divisional Court since the decisions in *Hunt* v. *Richardson*, *ante*, p. 25, and *Grigg* v. *Smith*, *ante*, p. 27. See 90 J. P. N. (editorial article), August 14th, 1926, at p. 463, where the cases of *Jones* v. *Jones and another*, *Davis* v. *Blackman*, and *Latham* v. *Newlove* are mentioned. The effect of the decisions in these cases is to emphasise the point that proof that milk has been sold "as it came from the cow" must, in order to avail as a defence, be positive, clear and complete, with no gap or lacuna, from the moment at which the milk is taken from the cow to the moment at which it was handed to the purchaser. Other unreported cases to a similar effect are *Polock* v. *Surtees* (*British Food Journal*, June and November, 1924), *Dodd* v. *Pyke* (*The Dairyman* Newspaper, July, 1920), and *Hallimond* v. *Kitching* (*British Food Journal*, September, 1925).

In *Bridges* v. *Griffin*, [1925] 2 K. B. 233; 89 J. P. 122; 94 L. J. K. B. 728; 133 L. T. 177; 23 L. G. R. 564; 41 T. L. R. 523, there was a deficiency of milk fat due to the fact that cream had risen to the top of a milk churn and the sample in question had been drawn from a tap at the bottom of the churn:—*Held*, that there had been an abstraction of milk-fat, and that it was no answer to show that the milk from which the milk was sold was genuine milk. Per AVORY, J.: "If the cream does collect on the top of the milk, it is the duty of the vendor, by stirring the milk, to see that the milk at the bottom of the churn has its proper proportion of cream." This decision follows that in *Dyke* v. *Gower*, *ante*, p. 42, and is followed in the apparently unreported cases of *Thompson* v. *Nuttall* (*British Food Journal*, June, 1925), and *Jones* v. *Evans* (*British Food Journal*, December, 1926).

Sale of Food and Drugs Act, 1875, s. 14 (*ante*, p. 59).

Separation of Sample.—In *Wildridge* v. *Ashton*, [1924] 1 K. B. 92; 87 J. P. 197; 93 L. J. K. B. 30; 130 L. T. 205; 40 T. L. R. 28; 68 Sol. J. 165; 21 L. G. R. 702, an inspector took samples of milk from each of three churns forming one consignment. The analyst made a separate analysis of each sample, and by arithmetical calculation, allowing for the different quantities of milk in the churns, arrived at an average of the whole consignment, and on that basis one information was laid, copies of the three certificates being attached to the summons:—*Held*, that the samples had been taken in a proper and lawful manner (compare note (*h*) at p. 59, and note (*g*) at p. 116, *ante*).

Sale of Food and Drugs Act, 1875, s. 25 (*ante*, p. 91).

Written Warranty.—The case of *Dewey* v. *Faulkner*, cited at p. 91, is reported also as follows: [1923] 1 K. B. 315; 87 J. P. 45; 92 L. J. K. B. 318; 128 L. T. 602; 67 Sol. J. 316; 27 Cox C. C. 388; and 21 L. G. R. 96.

Butter and Margarine Act, 1907, s. 8 (*ante*, p. 183).

Fancy or other Descriptive Name.—In *Maypole Dairy Co., Ltd.* v. *Patterson*, [1923] S. C. (J.) 85, it was held in the Justiciary Appeal Court for Scotland that the Sheriff-Substitute had rightly convicted the appellants under s. 8 of the Butter and Margarine Act, 1907, for describing margarine by a name not allowed by that section, the court holding that there was evidence that the words "mixed with Maypole butter" had been so used as to form part of the name applied to the margarine.

In *Hawes* v. *Stephens*, [1924] 2 K. B. 179; 88 J. P. 97; 93 L. J. K. B. 891; 131 L. T. 140; 40 T. L. R. 682; 68 Sol. J. 793; 27 Cox C. C. 637; 22 L. G. R. 422, margarine was sold in an outer wrapper bearing the word "margarine," and an inner wrapper on which were the words "kernut margarine churned with fresh milk." The question was whether these words constituted a fancy or descriptive name contrary to s. 8 of the Butter and Margarine Act, 1907:—*Held*, distinguishing the case from *Maypole Dairy Co., Ltd.* v. *Patterson*, *supra*, that the descriptive words did not constitute a "name," or part of the name, and that no offence had been committed.

Milk and Dairies Amendment Act, 1922, s. 4 (*ante*, p. 193).

Warranty.—In *Reeman* v. *Knapp*, 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42, it was decided that the defence of warranty is not open to a milk vendor summoned under this section.

II.—REGULATIONS AND CIRCULARS.

The following should be noted in the Appendix to the seventh edition :—

Pp. 220—231 .	The Public Health (Milk and Cream) Regulations, 1912 (and the Amendment Order of 1917).	Revoked as from January 1st, 1928, by the Public Health (Preservatives, etc., in Food) Regulations, 1925 (S. R. & O., 1925, No. 775).
P. 238 . .	The Milk and Dairies (Consolidation) Act, 1915.	Came into force September 1st, 1925.
P. 275 . .	Circular on Preservatives in Milk.	Now to be read in conjunction with the Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1927.
Pp. 287, 295 .	Circulars on Milk and Cream Regulations.	
Pp. 314—338 .	Notes on Adulteration.	
P. 351 . .	Note on Preservatives and Colouring Matters.	
P. 338 . .	The Milk (Special Designations) Order, 1922.	Revoked as from July, 1923, and re-enacted with amendments by the Milk (Special Designations) Order, 1923 (S. R. & O., 1923, No. 601).
P. 352 . .	Circular on Milk Prosecutions.	Withdrawn by the Minister of Health.
P. 356 . .	Circular on Milk and Dairies (Amendment) Act, 1922.	To be read in conjunction with the Ministry's Circular 408, dated May 29th, 1923.
P. 365 . .	Memorandum on sale of milk under special designations.	

In a circular (Memo. 36/Foods, January, 1927) issued to local authorities, the Ministry of Health have repeated, with some minor amendments, the most important suggestions made from time to time in circulars previously issued.

The following regulations have been made by the Minister of Health in pursuance of the Public Health (Regulations as to Food) Act, 1907, etc. :—

Title of Regulations.	S. R. & O.	Date of Regulations.	Date of coming into Operation.
The Public Health (Condensed Milk) Regulations, 1923.	1923, No. 509.	May 1st, 1923.	Oct. 1st, 1923.
Do. (Scotland).	1923, No. 794, S. 51.	July 27th, 1923.	Oct. 1st, 1923.

Title of Regulations.	S. R. & O.	Date of Regulations.	Date of coming into operation.
The Public Health (Dried Milk) Regulations, 1923.	1923, No. 1323.	Nov. 5th, 1923.	May 1st, 1924.
Do. (Scotland).	1923, No. 1399, S. 71.	Nov. 20th, 1923.	May 1st, 1924.
The Public Health (Preservatives, etc, in Food) Regulations, 1925.	1925, No. 775.	Aug. 4th, 1925.	Jan. 1st, 1927.
Do. (Scotland).	1925, No. 814, S. 59.	Aug. 17th, 1925.	Do.
The Public Health (Preservatives, etc., in Food) Amendment Regulations, 1926.	1926, No. 1557.	Dec. 10th, 1926.	Do.
Do. (Scotland).	1926. No. 1603, S. 50.	Dec. 20th, 1926.	Dec. 20th, 1926.
The Public Health (Preservatives, etc., in Food) Amendment Regulations, 1927.	1927, No. 577.	June 25th, 1927.	June 25th, 1927.

With reference to the above regulations, it is to be observed that a penalty is only incurred thereunder when, in the words of the Public Health Act, 1896, s. 1 (3), a defendant has "wilfully neglected or refused to obey or carry out" the Regulations, except that this limitation does not apply to the sale of preserved butter, margarine, or milk-blended butter contrary to the Public Health (Preservatives in Food, etc.) Regulations—for the reason that the penalty in that respect is provided by the Butter and Margarine Act, 1907, s. 7 (3) (*ante*, p. 182), in which the word "wilfully" does not occur.

Cases dealing with wilful default include *Re Young and Harston's Contract*, [1885] 31 Ch. D. 174; 50 J. P. 245, where BOWEN, L.J., said of the word "wilful": "As generally used in courts of law it implies nothing blameable, but merely that some person being and acting as a free agent has omitted to do something which he ought to have done." Similar acts showing a systematic course of conduct may be proved against a defendant to show that a particular act, proved *aliunde*, was intentional and not accidental (*Makin* v. *Attorney-General of New South Wales*, [1894] A. C. 57; 58 J. P. 148; 63 L. J. P. C. 41; 69 L. T. 778; and *R.* v. *Stephens*, 52 J. P. 823; 58 L. T. 776; 16 Cox, 387). So when the defence of mistake is set up, similar acts may be receivable in evidence to disprove it (*R.* v. *Stephens*, *supra*, and *R.* v. *Richardson*, 2 F. & F. 343).

But it is to be noted that by the Sale of Food and Drugs Act, 1927, *post*, p. 383, any offence under regulations made under the Public Health (Regulations as to Food) Act, 1927, may be treated as an offence under either s. 3 or s. 6 of the Sale of Food and Drugs Act, 1875; and if the prosecution be insti-

tuted under those sections there is no need for the prosecutor to prove "wilful" neglect or refusal to obey.

The following regulations have been made under Acts relating specially to milk :—

Order.	S. R. & O.	Date of Order.	Date in Force.	Act under which Order made.
The Milk (Special Designations) Order, 1923.	1923, No. 601.	May 25th, 1923.	July 1st, 1923.	Milk and Dairies Amendment Act, 1922, s. 3.
Do. (Scotland).	1923, No. 656, S. 42.	June 15th, 1923.	July 1st, 1923.	Do.
The Milk and Dairies (Scotland) Order, 1925.	No. 883, S. 63.	Aug. 31st, 1925.	Sept. 1st, 1925. Jan. 1st, 1926. Jan. 1st, 1927.	Milk and Dairies (Scotland) Act, 1914, ss. 7 (10) and 12 (2).
The Milk (Special Designations) Amendment Order (Scotland), 1923.	1923, No. 869, S. 55.	July 23rd, 1923.	July 23rd, 1923.	Do.
The Milk and Dairies Order, 1926.	1926. No. 821.	July 6th, 1926.	Oct. 1st, 1926. April 1st, 1927. Oct. 1st, 1928.	Milk and Dairies (Consolidation) Act, 1915, s. 1.

III.—SALE OF FOOD AND DRUGS ACT, 1927.
(17 GEO. 5, c. 5.)

An Act to amend the Sale of Food and Drugs Acts, 1875 to 1907. [April 12th, 1927.]

WHEREAS it is expedient to give effect to the recommendations of the Departmental Committee on the use of preservatives and colouring matters in food:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Amendment of* 38 & 39 *Vict. c.* 63.—(1) Where any regulations (*a*) made under the Public Health (Regulations as to Food) Act, 1907, as amended by any subsequent enactment and the enactments mentioned in that Act, prescribe the composition of any article of food or drink intended for sale or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, a purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of section six of the Sale of Food and Drugs Act, 1875 (*b*), to have demanded an article complying with the provisions of the regulations, as regards the presence or amount of any constituent, ingredient or material specified in the regulations, and the addition of any such ingredient or material, in contravention of the regulations, shall, for the purposes of the said Act of 1875 (*b*), be deemed to render the article injurious to health.

(2) Where any such regulations restrict the addition of any preservative, or other ingredient or material, to an article of food or drink the addition of any such ingredient or material to an amount not exceeding the limit specified by the regulations shall not, for the purposes of the Sale of Food and Drugs Act, 1875 (*b*), be deemed to render the article injurious to health.

(*a*) **Regulations.**—For a list of these, see *ante*, pp. 380 *et seq.*

(*b*) **Offences under 1875 Act.**—The sale of an article of food of which the composition is not in accordance with the regulations may be an offence under s. 3 of the 1875 Act (*ante*, p. 4), s. 6 (*ante*, p. 9) or s. 7 (*ante*, p. 35). If the prosecution be brought under s. 6, the warranty defence is available, which would not be the case if the prosecution were taken directly under the Regulations.

2. *Short Title.*—This Act may be cited as the Sale of Food and Drugs Act, 1927, and shall be construed as one with the Sale of Food and Drugs Acts, 1875 to 1907, and those Acts and this Act may be cited together as the Sale of Food and Drugs Acts, 1875 to 1927.

3. *Commencement.*—This Act shall come into operation at the date of the passing of this Act.

IV.—SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926.

(16 & 17 Geo. 5, ch. 63.)

An Act to provide for the better protection of the Public in relation to the Sale of Food, including Agricultural and Horticultural Produce. [December 15th, 1926.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Prohibition of giving of Short Weight, Measure or Number.*—A person (*a*) shall not, in selling (*b*) any article of food (*c*) by weight (*d*), measure or number, deliver or cause to be delivered to the purchaser (*e*) a less weight (*f*), measure (*g*) or number, as the case may be, than is purported to be sold.

Guilty Knowledge.—As in the case of s. 6 of the Sale of Food and Drugs Act, 1875, *ante*, p. 9, there is no necessity for the prosecution to prove *mens rea*. Such words as "wilfully" or "knowingly" are not used in this section or in other sections of this Act creating offences. Notes (*a*) and (*b*) at pp. 10—14, *ante*, on liability of limited company, guilty knowledge, liability of master, liability of servant, and aiding and abetting, apply also to prosecutions under this section. When an offence is committed by a servant, either the master or the servant, or both master and servant, may presumably be prosecuted, as is the case under s. 6 of the Sale of Food and Drugs Act; but employers or principals, when prosecuted, may avail themselves of the special defences allowed by s. 12, *post*, p. 398.

(*a*) **Person.**—This word includes a limited company. See the cases cited in note (*a*), at p. 6, *ante*, and note (*a*) at p. 10, *ante*.

(*b*) **Sell.**—See s. 14, *post*, p. 403.

(*c*) **Food.**—For definition, see s. 13 (1), *post*, p. 401.

(*d*) **Sale by Weight, Measure or Number.**—It is to be particularly noticed that no article of food need be sold by weight or measure unless this be required by the terms of ss. 4, 5, 6 or 7, or by regulations made under s. 9 (1) of this Act, or by some other Act. Under s. 1 it is not unlawful to sell by price, *e.g.*, by the shilling's worth, or by the bottle or packet, or by the piece, or by description. The question of what constitutes a sale by weight is often of some difficulty, and has many times been considered by the High Court in connection with the sale of bread, in cases arising under 3 Geo. 4, c. cvi., s. 4, and the Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4. Both of those statutes, so far as they require the sale of bread by weight, are repealed by this Act (*post*, p. 403). Many of the decisions are based on considerations specially affecting bread under those statutes, but some are also of importance in considering the general question of sale by weight or measure or number. In *Lyons & Co., Limited* v. *Houghton*, [1915] 1 K. B. 489; 79 J. P. 233; 84

L. J. K. B. 979; 112 L. T. 771, the earlier decisions were reviewed in considering whether a particular loaf had been sold by weight. LUSH, J., said: "The result of the authorities, when properly considered, is simply this: There must be an ascertainment of the weight by an honest weighing; the seller must not purport to sell merely by description or by any other method than on the basis of weight. . . . Before he can be convicted (for selling in manner other than by weight) it must in my opinion be shown that he made some denomination other than weight the basis of the bargain." In the same case, ROWLATT, J., defined selling weight as "selling under a contract of which weight is a term, selling at a price which by contract between the parties depends on the weight of the article"; and ATKIN, J., said: "In order to make it a sale by weight, I think that weight must be a term of the contract."

In *Lyons & Co., Limited* v. *Houghton, supra*, the further question was considered whether, under the old Acts relating to the sale of bread by weight, sale by weight meant sale of the actual true weight; and in that case ROWLATT and ATKIN, JJ., held (LUSH, J., dissenting), following the decisions in *Houghton* v. *Buxton* (1907), 24 T. L. R. 200, and *Cox* v. *Bleines*, [1902] 1 K. B. 670; 66 J. P. 407, that there was not a sale by weight unless the quantity of bread sold was of the true weight purported to be sold. To apply the judgments literally to the section now under consideration would make complete nonsense of it. It is submitted, therefore, that a person may be "selling by weight, measure or number" though he delivers a less quantity than he purports to supply. In support of this proposition, see the judgment of BLACKBURN, J., in *Jones* v. *Huxtable* (1867), L. R. 2 K. B. 460; 31 J. P. 534, approved by LUSH, J., in *Lyons & Co., Limited* v. *Houghton, supra*, in the following words: "A man who delivers what is not in fact the quantity which he pretends to deliver is none the less selling by weight; at least that was the view of BLACKBURN, J., and it is my own. I cannot see how the completeness or incompleteness of the weight can affect the method or basis upon which the contract of sale was made. They are two totally different things to my mind." Although this was a dissenting judgment, and not the decision of the court, it is submitted, having regard to the clear intention of the new statute now under discussion, that the view of BLACKBURN, J., and LUSH, J., would be adopted in defining a selling by weight, measure or number for the purpose of this section. A person purporting to sell eggs by the dozen is none the less "selling by number" if he miscounts the eggs sold.

A sale might be a sale by weight under the old Bread Acts, although the article was not actually weighed at the time of sale, but in order to constitute a sale by weight under those Acts there must have been a weighing with some reference to the sale (*Mattinson* v. *Binley*, [1908] 2 K. B. 534; 72 J. P. 346; 6 L. G. R. 760; 77 L. J. K. B. 832; 99 L. T. 53; *Blackledge & Sons, Limited* v. *Bolshaw*, 72 J. P. 383; 6 L. G. R. 885; 99 L. T. 60; *Evans* v. *Jones*, 72 J. P. 481; 6 L. G. R. 1166; 99 L. T. 799).

Standards of Weight and Measure.—This Act, by s. 15 (1), *post*, p. 403, is to be construed as one with the Weights and Measures Acts, 1878 to 1926. The material parts of those Acts are printed at pp. 408 to 416, *post*. All foods sold by weight must be sold by avoirdupois weight or metric weight; and those sold by measure must be sold by imperial or metric measure.

(*e*) **Purchaser.**—See s. 13 (1), *post*, p. 401.

(*f*) **A Less Weight.**—How far a shortage in weight arising solely from the inclusion of the weight of a wrapper would constitute an offence under s. 1 is not perhaps wholly free from doubt. By s. 4, *post*, p. 388, certain articles must be sold by net weight, and certain other articles may be sold by gross weight, subject to the prescribed conditions. Articles other than those within the scope of ss. 4, 5 and 6 need not be sold by weight, but if they are so sold, a deficiency in weight is an offence under s. 1, and there is nothing in this section to suggest that, in the absence of a statement by the vendor as to the weight supplied, the inclusion of the weight of a wrapper or container is permissible.

And if the vendor makes a statement as to the weight, it is deemed to be a statement as to net weight (s. 2, *infra*).

If, for example, a person purports, without making any statement, to sell a pound of jam, or of chocolate creams or of cake, it may be an offence under s. 1 to sell a packet weighing one pound gross weight including, as a substantial part of the total weight, the weight of the pot or box or wrapper in which the food was packed for sale. But this is a subject as to which there must be an element of doubt until an authoritative decision has been given thereon, and trade custom must be regarded in considering what is the purported weight.

It is further to be noted that the exemptions of sales for consumption on the premises of the seller and of sales in petty amounts (s. 8, *post*, p. 395) only apply to those articles which come within the scope of ss. 4, 5, 6 and 7 of this Act. Thus the sale of beer of short measure can be dealt with as an offence under s. 1, even if the beer is sold for consumption on the premises; and a sale of an ounce of sweets is similarly subject to the provisions of the section.

(*g*) **Less Measure.**—Section 69 of the Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), requires that "all intoxicating liquor which is sold by retail and not in cask or bottle and is not sold in a quantity less than half-a-pint, shall be sold in measures marked according to the imperial standards." Section 9 of the Licensing Act, 1921 (11 & 12 Geo. 5, c. 42), provides that "no person shall either by himself or by any servant or agent in any licensed premises or club, sell or supply to any person, as the measure of intoxicating liquor for which he asks, an amount exceeding that measure." This prohibition of what is known as the long-pull appears to be the only statutory prohibition of over-measure in the sale of any article of food, unless the sale of over-measure in milk is deemed to be prohibited by s. 7 of this Act (*post*, p. 394).

In the sale of intoxicating liquors, as, for example, the sale of spirits, in small quantities for immediate consumption on the premises of the seller, there is as a general rule no request by the purchaser for any specified quantity, nor any definite understanding between buyer and seller as to the quantity by measure to be supplied. Applying the judgments in *Lyons & Co., Limited* v. *Houghton, supra*, spirits so sold are not sold by measure. But some publicans, by price lists exhibited in their bars, explicitly hold themselves out as selling spirits in small quantities by measure, *e.g.*, "Gin, 42 under proof, per one-fifth quartern, 5*d*." In such a case it would be difficult for the publican to deny that the sale of fivepence-worth of gin of 42 degrees under proof is a sale by measure, a quartern in this connection being universally known to be a quarter of a pint, or five fluid ounces by measure.

In the sale of many bottled intoxicating liquors it is the habit of the trade to supply by the bottle or half bottle. "Bottles" usually contain what is known as a "reputed quart," but purchasers order so many "bottles" without specifying what they expect each bottle to contain. A reputed quart is commonly understood to be one-sixth of a gallon, or 1⅓ pints.

If there is in any particular instance a clear understanding between buyer and seller that a reputed quart of wine or spirits shall be sold, presumably this section could be invoked if the quantity proved to be less than 1⅓ pints. If, however, a buyer ordered "a quart" of liquor without any such understanding between the parties, and without any declaration by the seller that a reputed quart was to be supplied, it would appear that the quantity purported to be sold might be interpreted as being an imperial quart (2 pints), and the sale of a reputed quart would then be a breach of this section.

2. *Statements as to Weight or Measure on Pre-packed Articles.*—A statement (*a*) as to the weight or measure of a pre-packed (*b*) article of food shall be deemed to be a state-

ment as to the net weight or measure thereof unless otherwise specified.

(*a*) **Statement as to Weight or Measure.**—It is presumed that a tradesman who passively and tacitly executes a customer's order for a quantity of food stated by the customer does not by so doing make a statement as to the quantity supplied.

(*b*) **Pre-packed Articles of Food.**—For definition, see s. 13 (1) *post*, p. 401. Note that articles may be pre-packed, even though they are made up into packets on the premises at which they are to be sold. The provisions of this Act, so far as they relate to pre-packed goods other than tea, do not take effect until January 1st, 1928 (see note (*b*) at page 404, *post*).

3. *Misrepresentation.*—A person (*a*) shall not on or in connection with the sale (*b*) of any article of food (*c*), or in exposing or offering (*d*) any article of food for sale, make any misrepresentation either by word of mouth or otherwise, or commit any other act calculated to mislead the purchaser or prospective purchaser, as to the weight or measure of the article, or, if any articles are being sold or offered for sale by number, as to the number of articles sold or offered for sale.

Scope of Section.—This section goes beyond the two preceding sections as it deals with articles exposed or offered for sale as well as those actually sold. Moreover, its scope is not limited, as is that of s. 2, to "prepacked" articles of food.

Presumably, a tradesman who pretends by words or actions to supply substantial overweight or overmeasure, but actually supplies only the exact quantity contracted for, commits an offence under this section.

(*a*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.

(*b*) **Sale.**—See s. 14, *post*, p. 403.

(*c*) **Food.**—For definition, see s. 13 (1), *post*, p. 402.

(*d*) **Exposing or Offering for Sale.**—See note (*d*) at p. 126, *ante*, and note (*a*) at p. 130, *ante*. See also *Keating* v. *Horwood*, 90 J. P. 141, where a baker was delivering bread from a touring motor car in which were loaves. These loaves were weighed by an inspector and found to be short in weight. The baker was summoned under the Sale of Food Order, 1921, (1) for offering for sale bread otherwise than by weight, and (2) for exposing for sale bread not of the weight of 1 lb. or an even number of pounds :—*Held*, in the Divisional Court, that as the bread was taken out for the purpose of being sold to customers if they required it, and as on starting the round the baker did not, and could not, know which loaves, if any, would remain unsold, there was an exposure for sale and also an offering for sale. But SHEARMAN, J., had some doubt whether bread in such circumstances can be said to be offered for sale until a particular loaf is tendered to a particular customer.

4. *Provisions Applicable to the Sale of certain Articles of Common Consumption.*—(1) A person (*a*) shall not sell (*b*) any article of any of the kinds of food set forth in the First Schedule (*c*) to this Act otherwise than by net weight (*d*) except that, in the case of articles specified in Part II and

Part III of that Schedule, where the article is weighed for sale in a wrapper or container the weight purported to be sold may include the weight of the wrapper or container if the weight of the wrapper or container (*e*) does not exceed—

(a) in the case of an article specified in Part II of the Schedule two and a half drams ; and

(b) in the case of an article specified in Part III of the Schedule for a parcel not exceeding three pounds in weight four and a half drams, for a parcel exceeding three pounds but not exceeding seven pounds in weight three and a half drams, and for a parcel exceeding seven pounds in weight three drams,

per pound of the article sold.

(2) A person (*a*) shall not sell (*b*) or have in his possession for sale any prepacked article of food (*f*) of any of the kinds set forth in the First Schedule (*c*) to this Act, unless—

(a) the article is made up for sale in quantities of two ounces, or in multiples of two ounces up to a limit of eight ounces, in multiples of a quarter of a pound up to a limit of two pounds, in multiples of half a pound up to a limit of four pounds, or in multiples of one pound ; and

(b) the wrapper or container bears thereon, or on a label securely attached thereto, a true statement in plain characters of the minimum net weight of the article contained therein, or, in any case where the weight of the wrapper or container is permitted by the preceding sub-section to be included in the weight purported to be sold, of the minimum weight of the article with its wrapper or container :

Provided that, in the case where the article is made up for sale on the premises where it is sold or kept for sale by a retailer and is made up in quantities of two ounces, four ounces, eight ounces, one pound, or a multiple of one pound, it shall not be necessary that such a statement as aforesaid should be borne on or attached to the wrapper or container.

(3) Any such statement as aforesaid shall not be deemed to be untrue if it is shown that it was true at the time of packing or of importation, whichever was the later, and the original wrapper or container has remained intact.

(4) A person (*a*) shall not sell (*b*) any article (not being a pre-packed article (*f*)) of any of the kinds of food set forth in the First Schedule (*c*) to this Act in quantities

other than two ounces, four ounces, eight ounces, one pound, or multiples of one pound, unless—

(a) the article is weighed in the presence of the purchaser (*g*) and forthwith delivered to him ; or

(b) the article is delivered to the purchaser (*g*) accompanied by a legible statement of its weight.

(5) It shall be lawful to print on any wrapper or container in which any pre-packed article (*f*) is contained a statement of weight notwithstanding anything in any other Act to the contrary.

(6) This section shall not apply in the case of any article which is proved to have been sold for shipment to a place outside Great Britain or to be intended to be so sold.

(*a*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.

(*b*) **Sale.**—See s. 8, *post*, p. 395, and s. 14, *post*, p. 403.

(*c*) **First Schedule.**—*Post*, p. 404.

(*d*) **Sale by Net Weight.**—The question whether goods are sold by weight when their weight is less than represented has already been discussed. See note (*d*) to s. 1, *ante*, p. 385, where the opinion has been expressed that a person may still be "selling by weight" though he delivers less than the quantity which he purports to sell. A similar question as to the meaning of sale "by net weight" arises for consideration on this and the two succeeding sections. Does a person sell otherwise than "by net weight" if the true net weight of the article sold is less than the weight purported to be sold ? It is submitted that the answer is not necessarily "Yes," and that what is meant when sale by net weight is required is, first, that the article must be sold by weight (as to which see *ante*, p. 385), and, secondly, that the weight of the wrapper or container must not be included with the weight of the food packed therein. If a shortage in weight arises solely from the improper inclusion of the weight of the wrapper or container, then clearly the sale is made by gross weight and is a sale otherwise than by net weight. But if the shortage arises in some other way, *e.g.*, from the use of inaccurate scales or weights by a seller intending and endeavouring to sell by net weight, then any summons should be issued under s. 1 of this Act for selling a less weight than is purported to be sold, rather than under ss. 4, 5 or 6, for selling otherwise than by net weight.

(*e*) **Weight of Wrapper or Container.**—The following table shows the greatest permissible weight of the wrapper or container in the case of articles in Part II of the Schedule. (There are 27·343 grains in a dram.)

Weight of Article.	Permissible Weight of Wrapper.	Equivalent, to Nearest Half-grain.
2 oz.	$\frac{5}{16}$ dram.	Or $8\frac{1}{2}$ grains.
$\frac{1}{4}$ lb.	$\frac{6}{8}$ „	„ 17 „
6 oz.	$\frac{15}{16}$ „	„ $25\frac{1}{2}$ „
$\frac{1}{2}$ lb.	$1\frac{1}{4}$ drams.	„ 1 dram, 7 grains.
$\frac{3}{4}$ „	$1\frac{7}{8}$ „	„ 1 „ $23\frac{1}{2}$ „
1 „	$2\frac{1}{2}$ „	
$1\frac{1}{4}$ „	$3\frac{1}{8}$ „	„ 3 drams, $3\frac{1}{2}$ „
$1\frac{1}{2}$ „	$3\frac{3}{4}$ „	„ 3 „ $20\frac{1}{2}$ „

Weight of Article.	Permissible Weight of Wrapper.	Equivalent, to Nearest Half-grain.
1¾ lb.	4⅜ drams.	Or 4 drams, 10½ grains.
2 „	5 „	
2½ „	6¼ „	„ 6 „ 7 „
3 „	7½ „	
3½ „	8¾ „	„ 8 „ 20½ „
4 „	10 „	
5 „	12½ „	
6 „	15 „	
7 „	17½ „	„ 1 oz. 1½ drams.

The following table shows the greatest permissible weight of the wrapper or container in the case of articles in Part III of the Schedule:—

Weight of Article.	Permissible Weight of Wrapper.	Equivalent, to nearest Half-grain.
2 oz.	9/16 dram.	Or 15½ grains.
¼ lb.	1⅛ drams.	„ 1 dram, 3½ grains.
6 oz.	1 1/16 „	„ 1 „ 19 „
½ lb.	2¼ „	„ 2 drams, 7 „
¾ „	3⅜ „	„ 3 „ 10½ „
1 „	4½ „	
1¼ „	5⅝ „	„ 5 „ 17 „
1½ „	6¾ „	„ 6 „ 20½ „
1¾ „	7 7/8 „	„ 7 „ 24 „
2 „	9 „	
2½ „	11¼ „	„ 11 „ 7 „
3 „	13½ „	
3½ „	12¼ „	„ 12 „ 7 „
4 „	14 „	
5 „	17½ „	„ 1 oz. 1½ drams.
6 „	21 „	„ 1 „ 5 „
7 „	24½ „	„ 1 „ 8½ „
8 „	24 „	„ 1½ „
10 „	30 „	„ 1 „ 14 „
12 „	36 „	„ 2 „ 4 „
14 „	42 „	„ 2 „ 10 „

(*f*) **Pre-packed Articles of Food.**—For definition, see s. 13 (1), *post*, p. 401. For commencement, see s. 15 (2), *post*, p. 403, and note (*b*) at page 404, *post*.
(*g*) **Purchaser.**—See s. 13 (1), *post*, p. 401.

5. *Provisions Applicable to the Sale of Butchers' Meat.*—(1) A person (*a*) shall not sell (*b*) any butchers' meat (*c*) otherwise than by net weight (*d*).

(2) A person (*a*) shall not deliver or cause to be delivered to a purchaser (*e*) any butchers' meat (*c*) without a legible

statement of the net weight on which the purchase price is based unless delivery is made to the purchaser (*e*) on or at the premises of the seller immediately after the meat has been weighed in the presence of the purchaser (*e*).

Provided that where at the request of the purchaser (*e*) the meat is boned, trimmed, or subjected to any other process involving loss of weight before delivery, and the bones or other material thus removed are not delivered with the meat, or where at the request of the purchaser (*e*) delivery of the meat is deferred, such statement as aforesaid shall include a statement of the net weight of the meat as sent out for delivery as well as the net weight on which the purchase price is based.

(*a*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.
(*b*) **Sell.**—See s. 8, *post*, p. 395, and s. 14, *post*, p. 403.
(*c*) **Butchers' Meat.**—For definition, see s. 13 (1), *post*, p. 402.
(*d*) **By Net Weight.**—See note (*d*) to s. 4, *ante*, p. 390.
(*e*) **Purchaser.**—See s. 13 (1), *post*, p. 401.
Subsection (2).—Except where the proviso applies, the statement of weight may apparently be written out immediately before delivery, and need not be fn the possession of the butcher's carrier as he goes on his round carrying meat for delivery.

6. *Provisions Applicable to the Sale of Bread.*—(1) A person (*a*) shall not sell (*b*) or offer for sale (*c*) any bread otherwise than by net weight (*d*).

(2) A person (*a*) shall not sell or have in his possession for sale or delivery under a contract of sale (*e*) any loaf of bread unless its net weight is one pound or an integral number of pounds (*f*):

Provided that this subsection shall not apply to loaves supplied under contract where the contract provides for the supply for consumption on the premises of the purchaser of not less than half a hundredweight of bread at a time, and for the weighing of the bread on delivery.

(3) The foregoing provisions of this section shall not apply to fancy bread (*g*) or to loaves not exceeding twelve ounces in weight:

Provided that the foregoing provisions shall apply to pan loaves, French loaves, and loaves of a similar character (*h*), with this modification, that in Scotland any such loaf of the net weight of one-and-three-quarter pounds may be sold or delivered for sale if the weight is clearly marked either by an impression made in baking or on any printed band or wrapper surrounding or containing the loaf.

(4) Every person (*a*) selling bread, or having in his possession any bread for the purpose of sale, shall provide

and keep in some conspicuous part of his shop or premises a correct weighing instrument (*i*) of a pattern suitable for weighing bread, and shall, if so required by the purchaser (*j*), or by an inspector of weights and measures (*k*), weigh the bread in the presence of the person so requiring, or, if the person so requiring is such an inspector as aforesaid, shall permit the inspector to weigh the bread.

(5) Every person carrying bread for sale or delivery to a purchaser shall, if so required by an inspector of weights and measures, permit the inspector to weigh the bread.

(*a*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.

(*b*) **Sell.**—See s. 8, *post*, p. 395, and s. 14, *post*, p. 403.

(*c*) **Offer for Sale.**—See note (*d*) to s. 3, *ante*, p. 388.

(*d*) **Net Weight.**—See note (*d*) to s. 4, *ante*, p. 390.

(*e*) **Contract of Sale.**—See note (*e*) at p. 114, *ante*. And in the unreported case of *Birch* v. *Eldred* (*The Dairy*, June 20th, 1925) the Divisional Court had to consider whether in the case of milk sampled in course of delivery under a contract, in pursuance of s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, the contract of a corporation (in that case a Board of Guardians) for the purchase of the milk must be under seal. Lord HEWART, L.C.J., said that it was immaterial whether the contract were sealed or not, and the other judges concurred in that view.

(*f*) **Net Weight in Pounds.**—Subject to the safeguards provided for the seller of bread by s. 12 of this Act (*post*, p. 398), it may be stated in general terms that any substantial excess or deficiency in the weight of loaves would appear to be technically a breach of this section. But the object of the Act is so plainly and explicitly "to provide for the better protection of the public" that it is improbable that prosecutions will be instituted in respect of excessive weight. Per Lord ALVERSTONE, L.C.J., in *Blackledge & Sons, Limited* v. *Bolshaw*, *supra* (referring to the Bread Act, 1836): "This Act is not intended to prevent people getting a few extra ounces. It is to prevent them getting less than the proper weight."

It is well known that loaves lose weight through the evaporation of water both during the process of baking and also after removal from the oven. It is, therefore, not possible for a baker to ensure that every loaf shall weigh precisely any stated number of pounds at any period up to the time of sale. But experience teaches how much the dough should weigh before baking, so as to ensure that there shall be no shortage in the average weight of a reasonable number of loaves. It has been stated on good authority that for loaves purporting to be "half-quartern" loaves, *i.e.*, to weigh 2 lb. each when sold, the dough should in the absence of special circumstances weigh from 2 lb. 4 oz. to 2 lb. 5 oz. To "weigh in" at less than 2 lb. 3 oz. for batch bread, or 2 lb. 4½ oz. for crusty loaves, is to run a serious risk that many of the loaves, especially if kept for twenty-four hours before sale, will weigh less than 2 lb. each.

(*g*) **Fancy Bread.**—"Bread usually sold under the denomination of French or fancy bread or rolls" was exempted under s. 4 of the Bread Act of 1836 (6 & 7 Will. 4, c. 37) and s. 4 of the earlier Act applying to London (3 Geo. 4, c. cvi.) (both of which are repealed by this Act) from the provisions of those Acts requiring bread to be sold by weight. The meaning of that exemption was considered in *R.* v. *Wood*, L. R. 4 Q. B. 559; 33 J. P. 823; 38 L. J. 144; 20 L. T. 654; *The Aerated Bread Co.* v. *Gregg*, L. R. 8 Q. B. 355; 37 J. P. 388; 42 L. J. 117; 28 L. T. 816; *The V.V. Bread Co.* v. *Stubbs*, 60 J. P. 424; 74 L. T. 704; *London County Council* v. *Read*, [1900] 1 Q. B. 288; 63 J. P.

775; 69 L. J. Q. B. 39; 81 L. T. 452; and *Bailey* v. *Barsby*, [1909] 2 K. B. 60; 73 J. P. 138; 78 L. J. K. B. 974; 100 L. T. 370.

It will be noticed, however, that the exemption in this section is quite differently worded; and particularly that in England and Wales there is now no exception if favour of French loaves. This difference is to be borne in mind when attempting to apply to this Act the earlier decisions, in which attempts were made to define "bread usually sold under the denomination of French or fancy bread."

From the judgments in the cases cited above it is clear that, under the old Acts, in order to come within the exemption the loaf had to be "something which to the eyes is distinctly different from and not liable to be confounded with ordinary household bread by those who do not know the intricacies of the trade" (per BIGHAM, J., in *Bailey* v. *Barsby*, *supra*, following WILLS, J., in *Aerated Bread Co., Limited* v. *Gregg*, *supra*). "A difference in quality only will not take a loaf out of the category of ordinary household bread" (per WALTON, J., in *Bailey* v. *Barsby*, *supra*). And per CAVE, J., in *The V. V. Bread Co.* v. *Stubbs*, *supra*, quoted with approval by Lord ALVERSTONE, L.C.J., in *Bailey* v. *Barsby*, *supra*: "If you want to sell it as 'fancy bread,' make it 'fancy bread' shape, or at any rate, if there is no shape that can be called 'fancy bread' shape, make it in a shape which is different in appearance from the half-quartern loaf, so that no one when he buys it will be under the impression that he is getting an ordinary half-quartern loaf. So long as you do that you will be right."

(*h*) **Pan Loaves, French Loaves, etc., in Scotland.**—In Scottish Burghs, by s. 427 of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), which section, with similar sections in certain local Scottish Acts, is repealed by this Act (*post*, p. 403), the imperial weight of loaves had to be impressed thereon in large and distinct figures, fancy bread being exempt from that requirement. It was given in evidence before the Food Council in 1925 ("Evidence on Short Weight and Measure in the Sale of Foodstuffs," Vol. II., pp. 58 *et seq.*), that in Scotland fully 75 per cent. of the bread made is baked in plain "batch" loaves, square in shape with little or no crust except at the top and bottom, and that all other bread has always been deemed to be fancy bread; French loaves, pan loaves and crusty loaves being sold by the loaf, and not by weight. These latter loaves, it was stated, have weighed, in fact, about 1¾ lb. as compared with the plain batch loaves of 2 lb. each, and the Scottish public have long been accustomed to pay the same price for both kinds of bread. Sub-section (3) of this section formally sanctions the existing practice, with the result that, in Scotland, only loaves baked in batches need weigh 2 lb. each.

(*i*) **Correct Weighing Instrument.**—Weights sufficient to ascertain the weight of the bread must also be kept at the shop or premises. By s. 35 of the Weights and Measures Act, 1889 (*post*, p. 414), with which this Act is to be construed as one (see s. 15 (1), *post*, p. 403), "weighing instrument" is defined as including, *inter alia*, "scales, with the weights belonging thereto."

(*j*) **Purchaser.**—See s. 13 (1), *post*, p. 401.

(*k*) **Inspector of Weights and Measures**—or other duly authorised officer of the local authority acting on behalf of an inspector of weights and measures. See s. 13 (3), *post*, p. 402. Inspectors of weights and measures are appointed by local authorities administering the Weights and Measures Acts, in pursuance of s. 43 of the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49). No person may be appointed such an inspector unless he has obtained from the Board of Trade a certificate of qualification after passing an examination (Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 8).

7. *Provisions Applicable to the Sale of Milk.*—(1) A person (*a*) shall not sell (*b*) any milk, or have in his posses-

sion for sale or delivery on sale any pre-packed (*c*) milk, except in quantities of half a pint or multiples of half a pint.

(2) This section shall extend to skimmed and separated milk and pasteurised milk and to milk which has been subjected to any other process, except that it shall not apply to dried or condensed milk (*d*).

(*a*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.

(*b*) **Sell.**—See s. 8, *infra*, and s. 14, *post*, p. 403.

(*c*) **Pre-packed.**—For definition, see s. 13 (1), *post*, p. 401 ; and for commencement, see s. 15 (2), *post*, p. 403. As milk sold in bottles may not be bottled except at the dairy premises (see Milk and Dairies Order, 1926, Article 31 (2)), all bottled milk delivered to customers is "pre-packed" within this sub-section.

(*d*) **Milk.**—Milk which, though still in liquid condition, has been evaporated so that its bulk is substantially reduced, is presumably to be regarded as condensed milk and to be exempted from the requirements of the section. The definition of condensed milk in the Public Health (Condensed Milk) Regulations, 1923, Article 2 (1), includes the article commonly known as "evaporated milk," and it seems desirable in practice to interpret "condensed milk" for the purpose of this Act in the same way.

8. *Savings.*—Nothing contained in the last four foregoing sections of this Act shall apply to the sale or offering for sale of any article of food for consumption on or at the premises of the seller, or to sales in petty amounts (*a*).

(*a*) **Sales in Petty Amounts.**—For definition, see s. 13 (1), *post*, p. 402.

9. *Power of Board of Trade to make Regulations.*—(1) The Board of Trade, after consultation with the Minister of Agriculture and Fisheries and such interests as appear to them to be concerned, may make regulations for the purpose—

(a) of making additions to or removals from or otherwise varying the list of articles set forth in the First Schedule to this Act ;

(b) of requiring any articles of food other than those required by this Act to be sold by weight or by measure to be sold only be weight or by measure, and of applying to any such articles any of the provisions of this Act, either without modification or subject to such modifications as may be specified in the regulations ;

(c) of requiring any pre-packed articles (*a*) of food other than those mentioned in the First Schedule to this Act to be labelled with an indication of their weight or measure ;

(d) of prescribing the manner in which indications of weight or measure are to be marked on pre-packed articles (*a*) required by or under this Act to be

marked with such indications, and the manner of re-sealing (*a*) wrappers and containers broken open under this Act;

and where the First Schedule is varied by the regulations this Act shall have effect as if the Schedule as so varied was substituted for the Schedule contained in this Act.

(2) Before any regulations other than regulations under paragraph (d) of subsection (1) of this section are made, the draft of the proposed regulations shall be laid before both Houses of Parliament, and the regulations shall not be made unless both Houses by resolution approve the draft either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the regulations may be made in the form in which they have been so approved.

Regulations made under paragraph (d) of subsection (1) of this section shall be laid before both Houses of Parliament as soon as may be after they are made.

(3) Regulations made under this section, if and so far as they relate to pre-packed articles (*a*), shall not come into force before the expiration of a period of six months after they are made.

(*a*) **Pre-packed Articles.**—For definition, see s. 13 (1), *post*, p. 401; and for methods of marking the weight of pre-packed articles and of resealing broken wrappers, see the Sale of Food (Weights and Measures; Pre-packed Articles) Regulations, 1927, p. 417, *post*.

10. *Powers of Inspection and Entry.*—(1) The power of inspection and of entry (*a*) conferred upon inspectors of weights and measures by section forty-eight of the Weights and Measures Act, 1878 (41 & 42 *Vict. c.* 49), for the purposes therein specified shall extend to the inspection and weighing or measuring by any such inspector (*b*) of any pre-packed articles of food (*c*) for the purpose of ascertaining whether they comply with the requirements of this Act, and to the entry into any place in which the inspector (*b*) has reasonable cause to believe that any such pre-packed articles (*c*) intended for sale are situated.

(2) Where any person has in his possession for sale or delivery on sale any pre-packed article of food (*c*) of any kind which is required by or under this Act to be sold by weight or measure, or any article of food in respect of which any representation of weight or measure is made, he shall, if so requested by an inspector of weights and measures (*b*) weigh or measure such article in the inspector's (*b*) presence

or permit the inspector (*b*) to weigh or measure it, and, if necessary for this purpose, shall break open, or allow the inspector (*b*) to break open, any wrapper or container in which such article is packed, and shall also if so requested by the inspector (*b*) sell the article to him.

(3) Where any wrapper or container in which any pre-packed article (*c*) is held ready for retail sale, or is being delivered on retail sale, is broken open by or at the request of an inspector of weights and measures (*b*) for the purpose of ascertaining the weight or measure of its contents and is found to comply with the requirements of this Act then, where the wrapper or container can be re-sealed without injury to the contents, the inspector (*b*) shall re-seal the wrapper or container with a label certifying that the weight or measure of the contents has been proved to be correct, and if the inspector (*b*) does not so re-seal the wrapper or container the retailer may if he so desires require the said inspector (*b*) to purchase the article on behalf of the local authority (*d*).

(4) All weights, measures, weighing and measuring appliances used by an inspector of weights and measures (*b*) in pursuance of this Act shall be made of such material, and in such form, as may be approved by the Board of Trade, and shall be verified and periodically reverified in such manner as the Board of Trade may from time to time direct.

(*a*) **Inspector's Powers of Inspection and Entry.**—See *post*, p. 409.
(*b*) **Inspector of Weights and Measures.**—See s. 13 (3), *post*, p. 402.
(*c*) **Pre-packed Articles.**—For definition, see s. 13 (1), *post*, p. 401; and for commencement see s. 15 (2), *post*, p. 403.
(*d*) **Local Authority.**—See note (*k*) to s. 12 (7), *post*, p. 401.

11. *Penalties.*—(1) Any person who refuses to comply with a request made by an inspector of weights and measures (*a*) under this Act, or in any other manner obstructs or hinders an inspector (*a*) in the exercise of his duties under this Act, shall be liable on summary conviction to a fine (*b*) not exceeding in the case of a first offence five pounds, and in the case of a second or subsequent offence (*c*) ten pounds.

(2) Any person (*d*) who fails to provide or keep a suitable weighing machine (*e*) for weighing bread as required by this Act shall be liable on summary conviction to a fine (*b*) not exceeding five pounds.

(3) Any person (*d*) who acts in contravention of any other provision of this Act for which no special penalty is provided

shall be liable on summary conviction to a fine (*b*) not exceeding in the case of a first offence five pounds, in the case of a second offence (*c*) twenty pounds, and in the case of a third or subsequent offence (*c*) fifty pounds.

(*a*) **Inspector of Weights and Measures.**—See s. 13 (3), *post*, p. 402.

(*b*) **Penalty where Fraud is Proved.**—By the Weights and Measures Act, 1889, s. 4, as amended by the Weights and Measures Act, 1904, s. 13 (3) (see *post*, p. 413), with both of which Acts this Act is to be construed as one (s. 15 (1), *post*, p. 403), offences proved to be committed with intent to defraud may involve, in addition to or in lieu of any fine, the imprisonment of the offender, with or without hard labour, for a term not exceeding two months. And under s. 14 of the Weights and Measures Act, 1889 (*post*, p. 413), a court may, if it think fit, cause a conviction to be published.

(*c*) **Second or Subsequent Offence.**—The increased penalty for a second or subsequent offence is not to be awarded unless that offence was committed after a conviction, within five years previously, for an offence under the same section (Weights and Measures Act, 1878, s. 58, *post*, p. 411).

(*d*) **Person.**—See note (*a*) to s. 1, *ante*, p. 385.

(*e*) **Suitable Weighing Machine.**—See note (*i*) to s. 6 (4), *ante*, p. 394, where it is indicated that weights as well as scales must be provided.

12. *Safeguards to Traders.*—(1) In any proceedings under this Act in respect of an alleged deficiency of weight or measure of any pre-packed article (*a*) or of bread, the court shall disregard any inconsiderable variation in the weight or measure of a single article, and shall have regard to the average weight or measure of a reasonable number of other articles of the same kind (if any) sold or delivered by the defendant, or in his possession for the purpose of sale or delivery, on the same occasion, and generally to all the circumstances of the case.

(2) In any proceedings under this Act in respect of an alleged deficiency of weight or measure or number, if the defendant proves to the satisfaction of the Court that such deficiency was due to a *bonâ fide* mistake or accident, or other causes beyond his control, and in spite of all reasonable precautions being taken and all due diligence exercised by the said defendant to prevent the occurrence of such deficiency, or was due to the action of some person over whom the defendant had no control, the defendant shall be discharged from the prosecution.

(3) In any proceedings under this Act in respect of an alleged deficiency in the weight of any article of food delivered to a purchaser, the defendant shall be discharged from the prosecution if he proves to the satisfaction of the court that the alleged deficiency was due to unavoidable evaporation or drainage and that due care and precaution had been taken to avoid such deficiency (*b*).

(4) The provisions of section twenty-five of the Sale of Food and Drugs Act, 1875 (38 & 39 *Vict. c.* 63), and of section twenty of the Sale of Food and Drugs Act, 1899 (62 & 63 *Vict. c.* 51), relating to warranties, as set out with appropriate modifications in the Second Schedule (*c*) to this Act, are hereby incorporated with this Act and shall apply to offences under this Act in respect of pre-packed articles of food (*a*), as they apply to proceedings for offences against the Sale of Food and Drugs Acts, 1875 to 1907.

(5) Where an employer or principal (*d*) is charged with an offence against this Act, he shall be entitled on information duly laid by him, and on giving not less than three days' notice of his intention to the prosecution, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and, if after the commission of the offence has been proved, the employer or principal proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his consent, connivance or wilful default, the said other person shall be summarily convicted of the offence and the employer or principal shall be exempt from any penalty :

Provided that the prosecution shall have in any such case the right to cross-examine the employer or principal if he gives evidence, and any witnesses called by him in support of his charge and to call rebutting evidence.

The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(6) A prosecution in respect of an offence by a retailer (*e*) under this Act, other than an offence of obstructing or hindering an inspector in the exercise of his duties, shall not be instituted (*f*) after the expiration of twenty-eight days (*g*) from the time when the offence was committed, nor unless within seven days (*h*) after the alleged commission of the offence notice in writing of the date and nature of the alleged offence has been served on (*i*) or sent by registered post to the defendant, nor unless in the case of any alleged deficiency the person against whom the allegation it made has been given reasonable opportunity to check the weight, measure or number of the article or articles in respect of which such allegation is made.

(7) A prosecution under this Act shall not be insti-

tuted (*j*) except by or on behalf of the Director of Public Prosecutions, a police authority or a local authority (*k*).

(*a*) **Pre-packed.**—For definition, see s. 13 (1), *post*, p. 401; and for commencement see s. 15 (2), *post*, p. 403.

(*b*) **Subsection (3).**—It is to be observed, first, that this subsection applies only to deficiencies in the weight of articles delivered to a purchaser—not to deficiencies ascertained to exist in the weight of articles in the retailer's possession offered or exposed or kept for sale. If a baker be summoned for having in his possession for sale loaves not weighing an integral number of pounds, he cannot make use of this subsection as a defence. Secondly, due care and precaution must be taken to avoid a deficiency in weight (*not* to avoid evaporation or drainage). This distinction will often be material when the weight of loaves is in question. No amount of care or precaution can prevent the evaporation of water from bread; but the precaution of allowing a sufficient margin in the weighing of the dough will avoid a deficiency, and if loaves are found to be of short weight, it may not be easy for a defendant to prove that he has taken the necessary precaution to prevent the shortage from arising.

(*c*) **Warranty Provisions.**—For the Second Schedule and notes thereon, see *post*, p. 405. For cases on warranties under the Sale of Food and Drugs Acts, see notes at pp. 79—93, and 163—168, *ante*. But it is to be observed that several important modifications have been made in the wording of the warranty provisions for the purpose of this Act, and that consequently not all of the decisions or warranties under the Sale of Food and Drugs Acts are applicable. This observation applies particularly to the question of the sufficiency of a mere description on a label or invoice (see *post*, p. 406).

(*d*) **Employer or Principal.**—An employer or principal is usually the owner of the business, but if a manager of a shop owned by some other person is prosecuted, he may perhaps be entitled to take advantage, as "employer or principal," of the provisions of this subsection and to lay an information against a subordinate employee.

(*e*) **Retailer.**—In respect of pre-packed articles of food, manufacturers and wholesale dealers may be prosecuted as well as retailers (s. 14, *post*, p. 403). In the case of such manufacturers or wholesale dealers the provisions of subsection (6) do not apply, and proceedings may be instituted against them within six months of the commission of the offence (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11).

(*f*) **Institution of Prosecution.**—The prosecution is instituted on the day when the information is laid. See note (*a*) at p. 157, *ante*.

(*g*) **Twenty-eight Days.**—See note (*b*) at p. 157, *ante*.

(*h*) **Within Seven Days.**—See note (*b*) at p. 164, *ante*. But it is to be observed that in the case there referred to the words of the section did not include "served on or." In *Retail Dairy Co., Limited* v. *Clarke*, *ante*, p. 164, the decision that posting the document on the seventh day was a sufficient sending was based on the fact that in the Sale of Food and Drugs Act, 1899, s. 20 (1), *ante*, p. 157, there were no words other than "send" from which it could be inferred that by "sending" was there meant "delivery." In the section now under consideration the context must also be considered, and possibly the notice here must reach the defendant not later than the seventh day from the alleged commission of the offence. See Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 26, and the cases of *Browne* v. *Black*, [1912] 1 K. B. 316; *R.* v. *Recorder of Richmond* (1858), 22 J. P. 674; and *R.* v. *Inhabitants of Slawstone* (1852), 16 J. P. 279.

(*i*) **Service of Notices.**—In the absence of any express provision requiring or permitting service at a last or usual place of abode, it is presumed that personal service on the defendant is the only alternative to the sending of a

notice by registered post; for the provision is for the protection of the defendant and should be construed strictly. If the notice be sent by registered post, the question arises whether it will suffice to address the document to the place of business of the defendant, or whether it is necessary to send it to his place of residence—as to which this Act is silent. Whichever means be adopted for serving the document, the prosecution should give the defendant formal notice to produce the original, and should be in a position, if challenged, to produce a copy and to prove the service or despatch of the original.

(*j*) **Institution of Prosecution.**—This section should be read with s. 14 of the Weights and Measures Act, 1904, *post*, p. 416, which enables an inspector of weights and measures, with the (general) consent of the local authority, to prosecute "any information, complaint or proceeding arising under the Weights and Measures Acts or in the discharge of his duties as such inspector." The 1904 Act is to be construed as one with this Act (s. 15 (1), *post*, p. 403), and in view of the section quoted above it may be that an inspector, who can prove that he has the general consent of his local authority to institute proceedings as a principal under the earlier Acts, needs no further power to prosecute under this Act. But in view of the introduction of the words "on behalf of," it would be a wise precaution on the part of local authorities who wish their inspector to institute proceedings to pass a formal resolution empowering him generally to institute proceedings "on behalf of" the local authority. A special and distinct consent in respect of each case that may arise was not required under s. 14 of the Weights and Measures Act, 1904 (*Tyler* v. *Ferris*, [1906] 1 K. B. 94; 70 J. P. 88; 75 L. J. K. B. 142; 93 L. T. 843; 54 W. R. 469; 22 L. T. R. 181; 4 L. G. R. 201), and is therefore unnecessary under this Act.

(*k*) **Local Authority.**—See Weights and Measures Act, 1878, ss. 50—54, and Fourth Schedule; Weights and Measures Act, 1889, s. 35; Local Government Act, 1888, ss. 3 and 39; and Local Government (Scotland) Act, 1889, s. 11, *post*, pp. 410 to 413. Under these enactments, in England and Wales the local authority is: in the City of London, the Court of Common Council; elsewhere in London, the London County Council; in county boroughs, the council of the county borough; in municipal boroughs, the council of the borough, if either (a) the borough had separate quarter sessions in 1878, (b) the borough council subsequently resolved to administer the Weights and Measures Acts, or (c) in 1878 the borough had appointed inspectors and possessed legal local standards. (But if the population of such a borough in 1881 was less than 10,000 the council of the borough ceased to be, and the county council became, the local authority for the purpose of the Weights and Measures Acts (Local Government Act, 1888, s. 39).) Elsewhere in England and Wales, and in Scotland (except in burghs administering the Weights and Measures Acts), the county council is the local authority for the purpose of this Act.

13. *Interpretation.*—(1) For the purpose of this Act unless the context otherwise requires—

The expression "purchaser" includes any person acting acting on behalf of the purchaser;

The expression "pre-packed" article means any article which is packed or made up in advance ready for retail sale in a wrapper or container, and where any article packed or made up in a wrapper or container is found on any premises where such articles are packed, kept or stored for sale, the article shall be deemed to be packed or made up in advance ready for retail sale unless the contrary is proved;

The expression "food" has the same meaning as in the Sale of Food and Drugs Act, 1899 (*a*), that is to say, it means and includes every article used for food or drink by man, and any article which ordinarily enters into or is used in the composition or preparation of human food; and also includes flavouring matters and condiments, but does not include articles sold or offered for sale as seed potatoes or seeds in respect of which the requirements of the Seeds Act, 1920 (10 & 11 *Geo.* 5, *c.* 54), are complied with;

The expression "butchers' meat" means beef, mutton, veal, lamb or pork, whether fresh, chilled, frozen or salted, and includes livers, but does not include heads, feet, hearts, lights, kidneys or sweetbreads, bacon, ham (*b*), pressed beef or any meat so treated as to be fit for human consumption without further preparation or cooking;

The expression "sale in petty amounts" means sale by the single pennyworth, or less than the pennyworth, or sale in quantities purporting to be less than two ounces.

(2) For the purposes of this Act, a person shall not be deemed to weigh or measure any article in the presence of the purchaser (*c*) or an inspector of weights and measures (*d*), as the case may be, unless he causes the weighing or measuring appliance or appliances used for the purpose to be so placed, and so conducts the operation of weighing or measuring the article, as to permit the purchaser (*c*) or inspector (*d*) a clear and unobstructed view of the said appliance or appliances and of the said operation and of all the indications of weight or measure pertaining to such operation.

(3) Any powers or duties (*e*) conferred or imposed by this Act on an inspector of weights and measures may, in any case where the local authority so determine, be exercised or performed by any other officer of the local authority appointed by them to act on behalf of an inspector of weights and measures for the purposes of this Act, and all references in this Act to inspectors of weights and measures shall be construed accordingly.

(4) In the application of this Act to Scotland—

(a) references to the Board of Agriculture for Scotland shall be substituted for references to the Minister of Agriculture and Fisheries, and the expression "information" shall mean petition or complaint;

(b) nothing contained in section twenty-seven of the Milk and Dairies (Scotland) Act, 1914 (4 & 5 *Geo.* 5, *c.* 46), shall be construed as limiting or affecting the application of the provisions of the Second Schedule to this Act to proceedings in respect of pre-packed milk ;

(c) for any reference to the Director of Public Prosecutions there shall be substituted a reference to the Lord Advocate.

(*a*) **Definition of Food.**—This definition is not precisely the same as in the statute quoted (see *ante*, p. 171), for in the Sale of Food and Drugs Act of 1899, s. 26, drugs and water are expressly excluded. Although liquid drugs are articles used for drink by man they are not presumably to be regarded as articles of food for the purpose of this Act.

(*b*) **Bacon, Cooked Meats, etc.**—Though these articles are not butchers' meat, and consequently not subject to the requirements of s. 5, *ante*, p. 391, they are subject to the general requirements of other sections of this Act, and, in particular, bacon and ham are among the articles enumerated in Part II. of the First Schedule, *post*, p. 404.

(*c*) **Purchaser.**—See the first definition in this section, *supra.*

(*d*) **Inspector of Weights and Measures.**—See sub-s. (3).

(*e*) **Powers and Duties of Inspectors.**—See note (*a*) to s. 10, *ante*, p. 397, note (*j*) to s. 12, *ante*, p. 401, and note (*a*) to s. 15, *post*, p. 404.

14. *Application of Act.*—This Act, except so far as it applies to pre-packed articles of food (*a*), shall apply only to retail dealings.

(*a*) **Pre-packed Articles.**—For definition, see s. 13 (1), *ante*, p. 401.

15. *Short Title, Construction, Commencement, Repeal and Extent.*—(1) This Act may be cited as the Sale of Food (Weights and Measures) Act, 1926, and shall be construed as one (*a*) with the Weights and Measures Acts, 1878 to 1926, and shall be included amongst the Acts which may be cited as the Weights and Measures Acts, 1878 to 1926.

(2) This Act shall come into operation on the first day of July, nineteen hundred and twenty-seven, except that the provisions of this Act so far as they relate to pre-packed articles other than tea shall not take effect until the expiration of such period, not being less than six months from that date, as the Board of Trade may by order determine (*b*), and different periods may be fixed by the Board in regard to different articles.

(3) The enactments set forth in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(4) This Act shall not apply to Northern Ireland.

(*a*) **Construed as One.**—The principal effects of construing this Act as one with the Weights and Measures Acts, 1878 to 1926, have already been noted (*ante*, pp. 386, 394, 398, 401). It is questionable to what extent, if at all, officers, other than inspectors of weights and measures, appointed by the local authority to exercise or perform on behalf of an inspector his powers and duties under this Act (under s. 13 (3), *ante*, p. 402) are to be regarded as thereby vested with the powers possessed by the inspectors under the earlier Acts. The inspector's powers can, under the earlier Acts, only be exercised by the inspector himself, who, before appointment as such, has to pass a statutory examination in order to prove his fitness and practical knowledge (Weights and Measures Act, 1904, s. 8 (1)), and has on appointment to enter forthwith into a personal recognisance for the due performance of the duties of his office (Weights and Measures Act, 1878, s. 43). It is submitted, therefore, that a person who is not an inspector cannot be authorised under this Act to exercise all the powers or perform the duties of an inspector under the earlier Acts.

(*b*) **Commencement.**—By the Sale of Food (Prepacked Articles) Order, 1927 (S. R. and O., 1927, No. 527), January 1st, 1928, has been fixed as the date on which the provisions relating to prepacked articles other than tea are to take effect.

SCHEDULES.

FIRST SCHEDULE.

PART I.

Articles required to be sold by Net Weight.

Tea.	Cocoa.
Coffee beans.	Cocoa powder.
Ground coffee, including chicory mixtures.	Chocolate powder.
	Potatoes.

PART II.

Articles required to be sold by Net Weight, except where weighed for sale in a Wrapper or Container and the Weight of the Wrapper or Container does not exceed two and a half drams per pound of the Articles sold.

Bacon.	Lard.
Ham.	Suet.
Butter.	Margarine.

PART III.

Articles required to be sold by Net Weight, except where weighed for sale in a Wrapper or Container, and the Weight of the Wrapper or Container does not exceed the specified number of drams per pound of the Article sold.

Flour of wheat, rye, maize, pea, or bean, including self-raising flour and cake flour.	Cornflour.
	Oatmeal.
	Rolled oats.
	Rice.

Sago.	Dried peas.
Tapioca.	Dried currants.
Sugar.	Dried raisins.
Dried beans.	Dried sultanas.

SECOND SCHEDULE.

PROVISIONS OF THE SALE OF FOOD AND DRUGS ACTS APPLIED.

(1) If in any proceedings under this Act in respect of any pre-packed article of food the defendant proves that he purchased the article in the wrapper or container in which he sold it or had it in his possession for the purposes of sale and with a written warranty of the weight or measure or number of the article, and that he had no reason to believe, at the time when he sold it or had it in his possession for the purposes of sale, that the article or its wrapper or container did not comply with the provisions of this Act, he shall be entitled to be discharged from the prosecution.

(2) A warranty shall not be available as a defence to any proceedings under this Act unless the defendant has, within seven days after service of the summons, sent (*a*) to the prosecutor a copy of such warranty (*b*) with a written notice stating that he intends to rely on the warranty and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person (*c*).

(3) The person by whom such warranty is alleged to have been given shall be entitled to appear (*d*) at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(4) A warranty given by a person resident outside Great Britain shall not be available as a defence to any proceeding under this Act, unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty.

(5) Where the defendant is a servant (*e*) of the person to whom a warranty was given, he shall, subject to the provisions hereof, be entitled to rely on the defence hereby allowed in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the pre-packed article did not comply with the provisions of this Act.

(6) Where the defendant in a prosecution under this Act has been discharged under the provisions of this schedule, any proceedings for giving the warranty relied on by the defendant in such prosecution may be taken as well before a court having jurisdiction in the place (*f*) where the contravention of this Act took place, as before a court having jurisdiction in the place where the warranty was given.

(7) Every person (*g*) who, in respect of the weight measure or number of any article of food sold by him as principal or agent, gives to the purchaser a false warranty in writing (*h*), shall be liable on summary conviction, for a first offence, to a fine (*i*) not exceeding twenty pounds, for a second offence to a fine (*i*) not exceeding fifty pounds, and for any subsequent offence to a fine (*i*) not exceeding one hundred pounds, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe (*j*) that the statements or descriptions contained therein were true.

(8) For the purposes of the foregoing provisions a statement on any container or any wrapper, band or label (*k*) affixed thereto or delivered therewith or a statement contained in an invoice (*k*), shall be deemed to be a written warranty.

(9) An invoice (*k*) describing the weight or measure or number of the articles shall be a sufficient warranty notwithstanding that it contains no words of express warranty or was delivered after the purchase of the article.

(*a*) **Sent.**—The copy of the warranty is "sent" if posted within seven days. See *ante*, p. 164.

(*b*) **Copy of Warranty.**—See the cases referred to in note (*c*) at p. 164, *ante*.

(*c*) **Notice to Warrantor.**—The notice to the warrantor need not be given within the seven days. See note (*d*) at p. 165, *ante*.

(*d*) **Appear.**—See note (*e*) at p. 165, *ante*.

(*e*) **Servant.**—See note (*f*) at p. 165, *ante*.

(*f*) **Venue of Information.**—See note (*k*) at p. 166, *ante*.

(*g*) **Person.**—A limited company can be convicted. See note (*l*) at p. 166, *ante*.

(*h*) **Time Limit.**—Prosecutions may be instituted within six months from the giving of the false warranty. See note (*n*) at p. 167, *ante*.

(*i*) **Penalties.**—See notes (*b*) and (*c*) to s. 11, *ante*, p. 398.

(*j*) **Scienter.**—See note (*p*) at p. 167, *ante*.

(*k*) **Sufficiency of Label or Invoice.**—Under the warranty provisions in the Sale of Food and Drugs Acts, a description on a label or in an invoice was not deemed a sufficient warranty unless there was some warranty in the contract of sale, or unless the label or invoice was given in pursuance of a stipulation in the contract of sale (*Jeynes* v. *Hindle*, *ante*, p. 90). But in earlier cases courts seem to have held that a label in itself constituted a sufficient

warranty (*Lindsay* v. *Rook*, *ante*, p. 84, and *Lewis* v. *Weatheritt*, *ante*, p. 90). Articles 8 and 9 of this Schedule are worded in a manner wholly different from the warranty sections of the Sale of Food and Drugs Acts, and it would appear from the language used that a description on a label or invoice is now to be deemed a sufficient warranty, even though not given in pursuance of any stipulation in the contract of purchase.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
3 *Geo.* 4, *c. cvi.*	*An Act to repeal the Acts now in force relating to Bread to be sold in the City of London and the Liberties thereof, and within the Weekly Bills of Mortality, and ten miles of the Royal Exchange: and to provide other regulations for the Making and Sale of Bread, and preventing the Adulteration of Meal, Flour, and Bread, within the limits aforesaid.*	*Sections three, four, eight and nine.*
6 & 7 *Will.* 4, *c.* 37.	*The Bread Act*, 1836 - -	*Sections three, four, six and seven.*
34 & 35 *Vict. c. cxli.*	*The Aberdeen Municipality Extension Act*, 1871.	*Section one hundred and fifty-one.*
45 & 46 *Vict. c. clxxxv.*	*The Dundee Police and Improvement Consolidation Act*, 1882.	*Section one hundred and seventy-two in so far as it incorporates section two hundred and seventy of the General Police and Improvement (Scotland) Act*, 1862.
52 & 53 *Vict. c.* 21.	*The Weights and Measures Act*, 1889.	*Section thirty-two.*
55 & 56 *Vict. c.* 55.	*Burgh Police (Scotland) Act*, 1892.	*Section four hundred and twenty-seven.*
58 & 59 *Vict. c. cxliii.*	*The Glasgow Corporation and Police Act*, 1895.	*Section thirty-six.*
4 *Edw.* 7, *c.* 28.	*The Weights and Measures Act*, 1904.	*Section eleven.*

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
9 *Edw.* 7, *c. cxxix.*	*The Greenock Corporation Act*, 1909.	*Section three hundred and sixty-seven in so far as it relates to section four hundred and twenty-seven of the Burgh Police (Scotland) Act*, 1892.
3 *& 4 Geo.* 5, *c. lxxiv.*	*The Edinburgh Corporation Act*, 1913.	*Section eighty-five.*
12 *& 13 Geo.* 5, *c.* 29.	*The Sale of Tea Act*, 1922 -	*The whole Act.*

EXTRACTS FROM PREVIOUS ACTS.

WEIGHTS AND MEASURES ACT, 1878.

(41 & 42 VICT. C. 49.)

14. *Imperial Weights derived from Imperial Standard Pound.*—One sixteenth part of the imperial standard pound shall be an ounce, and one sixteenth part of such ounce shall be a dram, and one seventh thousandth part of the imperial standard pound shall be a grain.

A stone shall consist of fourteen imperial standard pounds, and a hundredweight shall consist of eight such stones, and a ton shall consist of twenty such hundredweights. . . .

All the foregoing weights . . . shall be deemed to be avoirdupois weights.

15. *Imperial Measures of Capacity.*—The unit or standard measure of capacity from which all other measures of capacity, as well for liquids as for dry goods, shall be derived, shall be the gallon containing ten imperial standard pounds weight of distilled water weighed in air against brass weights, with the water and the air at the temperature of sixty-two degrees of Fahrenheit's thermometer, and with the barometer at thirty inches.

The quart shall be one fourth part of the gallon, and the pint shall be one eighth part of the gallon.

Two gallons shall be a peck, and eight gallons shall be a bushel, and eight such bushels shall be a quarter, and thirty-six such bushels shall be a chaldron.

. . . . . .

19. *Trade Contracts, Sales, Dealings, &c. to be in terms of Imperial Weights or Measures.*—Every contract, bargain, sale, or dealing, made or had in the United Kingdom for any work goods wares or merchandise or other thing which has been or is to be done, sold, delivered, carried, or agreed for by weight or measure, shall be deemed to be made and had according to one of the imperial weights or measures ascertained by this Act, or to some multiple or part thereof, and if not so made or had shall be void.

. . . . .

No local or customary measures, nor the use of the heaped measure, shall be lawful.

Any person who sells by any denomination of weight or measure other than one of the imperial weights or measures, or some multiple or part thereof, shall be liable to a fine not exceeding forty shillings for every such sale.

But see also Weights and Measures (Metric System) Act, 1897, *post*, p. 414.

20. *Sale by Avoirdupois Weight, with exceptions.*—All articles sold by weight shall be sold by avoirdupois weight, except that—

(1) Gold and silver, . . . and other precious metals or stones, may be sold by the ounce troy or by any decimal parts of such ounce . . . and

(2) Drugs, when sold by retail, may be sold by apothecaries weight.

. . . . .

21. *Exception for Contract, &c. in Metric Weights and Measures.*—A contract or dealing shall not be invalid or open to objection on the ground that the weights or measures expressed or referred to therein are weights or measures of the metric system, or on the ground that decimal subdivisions of imperial weights and measures, whether metric or otherwise, are used in such contract or dealing.

See also Weights and Measures (Metric System) Act, 1897, *post*, p. 414.

48. *Power to inspect Measures, Weights, Scales, &c., and to enter Shops, &c. for that purpose.*—Every inspector under this Act authorised in writing under the hand of a justice of the peace, also every justice of the peace, may at all reasonable times inspect all weights measures scales balances steelyards and weighing machines within his

jurisdiction which are used, or in the possession of any person or on any premises for use, for trade, . . . and may for the purpose of such inspection enter any place, whether a building or in the open air, whether open or enclosed, where he has reasonable cause to believe that there is any weight measure scale balance steelyard or weighing machine which he is authorised by this Act to inspect.

Any person who neglects or refuses to produce for such inspection all weights measures scales balances steelyards and weighing machines in his possession or on his premises, or refuses to permit the justice or inspector to examine the same or any of them, or obstructs the entry of the justice or inspector under this section, or otherwise obstructs or hinders a justice or inspector acting under this section, shall be liable to a fine not exceeding five, or, in the case of a second offence, ten pounds.

Inspectors should always carry their warrants, and be prepared to produce them if required.

Local Authorities.

50. *Local Authorities and Local Rate.*—For the purposes of this Act "the local authority" and "the local rate" shall mean in each of the different areas mentioned in the first column of the Fourth Schedule to this Act the authority and the rate or fund mentioned in that schedule in connection with that area.

Provided that in England the council or borough which has not a separate court of quarter sessions shall not, unless they so resolve, be the local authority for the purposes of this Act, and if they so resolve and provide local standards and appoint inspectors after the commencement of this Act, they shall forthwith give notice of such resolution and appointment, under the corporate seal of the borough, to the clerk of the peace of the county in which the borough is situate, and after the expiration of one month from the day on which that notice of the said appointment is given the powers of inspectors of weights and measures appointed by the justices of the county shall, as to such borough and the weights and measures of persons residing therein, cease; but until such notice is given the borough shall be deemed to form part of the said county in like manner as if the same were not a borough.

Where at the commencement of this Act legal local

standards are provided and inspectors are appointed by the council of a borough not having a separate court of quarter sessions, that council shall continue to be the local authority until they otherwise resolve.

But by s. 35 of the Weights and Measures Act, 1889, "local authority" is to be construed subject to the provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3, *post*, p. 412. See also the Local Government (Scotland), Act, 1889 (52 & 53 Vict. c. 50), s. 11, *post*, p. 413.

52. *Power of Local Authorities to combine for purposes of Act.*—Any two or more local authorities may combine, as regards either the whole or any part of the areas within their jurisdiction, for all or any of the purposes of this Act, upon such terms and in such manner as may be from time to time mutually agreed upon.

An inspector appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority jurisdiction and duties as if he had been appointed by each of the authorities who are parties to such agreement.

58. *Limitations as to Conviction for Second Offences.*—A person shall not be liable to any increased penalty for a second offence under any section of this Act unless that offence was committed after a conviction within five years previously for an offence under the same section.

. . . . .

FOURTH SCHEDULE.

LOCAL AUTHORITIES.

ENGLAND.

Area.	Local Authority.	Local Rate.
County - - -	The justices in general or quarter sessions assembled.	The county rate.
County of the City of London.	The court of the Lord Mayor and Aldermen of the city.	The consolidated rate.
Borough - - -	The mayor, aldermen, and burgesses acting by the council.	The borough fund and borough rate.

SCOTLAND.

Area.	Local Authority.	Local Rate.
County - - -	The justices in general or quarter sessions assembled.	The county general assessment.
Burgh - - -	The magistrates - - -	The police assessment.

. . . . .

Notes.

For the purposes of this schedule—

The expression "county," as regards England, does not include a county of a city or a county town, but includes every riding, division, or parts of a county having a separate court of quarter sessions. The Soke of Peterborough shall be deemed to be a county, but every other liberty of a county not forming part of the city of London shall be deemed to form part of the county in which the same is situate or which it adjoins, and if it adjoins more than one county, then of the county with which it has the longest common boundary.

The expression "borough," as regards England, means any place for the time being subject to the Municipal Corporation Act, 1835, and any Act amending the same, which has a separate commission of the peace.

. . . . .

LOCAL GOVERNMENT ACT, 1888.

(51 & 52 VICT. C. 41.)

3. *Powers transferred to County Councils.*—There shall be transferred to the council of each county on and after the appointed day the administrative business of the justices of the county in quarter sessions . . . namely,

. . . . .

(x.) The appointment removal and determination of salaries of . . . any officer whose remuneration is paid out of the county rate other than the clerk of the peace and the clerks of the justices ;

. . . . .

(xiii.) The execution as local authority of the Acts relating to . . . weights and measures.

. . . . .

39. *Application of Act to all Boroughs with Population under* 10,000.—(1) Where a borough, whether with or without a separate County of Quarter Sessions contained according to the census of 1881 a population of less than

ten thousand then after the appointed day all powers duties and liabilities of the mayor aldermen and burgesses or council of the borough or the watch committee of the borough in relation

. . . . .

(e) to weights and measures, if the council exercise any jurisdiction in relation thereto shall cease and . . . the area of the borough shall for all purposes . . . in this section mentioned form part of the county in like manner as if it were not a borough.

LOCAL GOVERNMENT (SCOTLAND) ACT, 1889.

(52 & 53 VICT. c. 50.)

. . . . .

11. *Powers transferred to County Councils.*— . . . there shall be transferred to and vested in the council of each county . . .

. . . . .

(5) The administrative powers and duties of the justices of the peace of the county . . . in respect of . . .

(i.) The execution as local authority of the Acts relating to . . . weights and measures.

WEIGHTS AND MEASURES ACT, 1889.

(52 & 53 VICT. c. 21.)

4. *Liability to Imprisonment in Case of Fraud.*—Where a person is convicted under any section of the principal Act or this Act of [any] (*a second or subsequent*) offence, (*a*) and the court by which he is convicted is of opinion that such offence was committed with intent to defraud, he shall be liable, in addition to or in lieu of any fine, to be imprisoned with or without hard labour for a term not exceeding two months.

(*a*) The words in italics are repealed, and the word "any" substituted, by s. 13 (3) of the Weights and Measures Act, 1904, *post*, p. 416.

14. *Publication of Conviction.*—Where a person is convicted before any court of any offence under the principal Act (*a*) or this Act, the court may, if it thinks fit, cause the

conviction to be published in such manner as it think desirable.

(*a*) The principal Act is the Weights and Measures Act, 1878.

33. *Saving for Liabilities otherwise than under Act.*—(1) No proceeding or conviction for any offence punishable under this Act shall affect any civil remedy to which any person aggrieved by the offence may be entitled.

(2) This Act shall not exempt any person from any indictment or other proceeding for an offence which is punishable at common law or under some Act of Parliament other than this Act, so that no person be punished twice for the same offence.

(3) Where proceedings are taken before any court against any person in respect of any offence punishable under this Act, and the offence is also punishable at common law or under some Act of Parliament other than this Act, the court may direct that, instead of those proceedings being continued, proceedings shall be taken against that person at common law or under some Act of Parliament other than this Act.

35. *Definitions.*—In this Act, unless the context otherwise requires,—

"Weighing instrument" includes scales, with the weights belonging thereto, scale-beams, balances, spring-balances, steelyards, weighing machines, and other instruments for weighing (*a*).

(*a*) See also Weights and Measures Act, 1904, s. 16, and Weights and Measures (Amendment) Act, 1926, s. 1, *post*, p. 416.

WEIGHTS AND MEASURES (METRIC SYSTEM) ACT, 1897.

(60 & 61 VICT. C. 46.)

1. *Use of Metric Weights and Measures in Trade.*—Notwithstanding anything in the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), the use in trade of a weight or measure of the metric system shall be lawful and nothing in section 19 of that Act shall make void any contract bargain sale or dealing by reason only of its being made or had according to weights and measures of the metric system. . . .

Equivalents to Metric Weights and Measures.—By Order in Council dated May 19th, 1898, official tables of equivalents of metric weights and measures were set up in terms of imperial weights and measures. The following extracts will suffice to enable deficiencies in weights and measures according to the metric system, in cases likely to be met with, to be converted into their equivalents in the Imperial System, with the aid of the ordinary tables of imperial and metric weights and measures :—

1 litre (1,000 cubic centimetres)	= 1·7598 pints (about 35 fluid ounces).
1 gramme	= 15·432 grains.
1 kilogramme	= 2·2046 lb.

WEIGHTS AND MEASURES ACT, 1904.

(4 ED. 7, C. 28.)

5. *Powers of Board of Trade as to General Regulations.*—(1) The Board of Trade may make general regulations (herein-after referred to as "the Board of Trade regulations") with respect to—

(a) the verification and stamping of weights and measures and weighing and measuring instruments, including the prohibition of stamping in cases where the nature, denomination, material, or principle of construction of the weight, measure, or instrument appears likely to facilitate the perpetration of fraud ; and

(b) the circumstances and conditions under which, and manner in which, stamps may be obliterated or defaced ; and

(c) the tests to be applied for the purpose of ascertaining the accuracy and efficiency of weights and measures and weighing and measuring instruments ; and

(d) the limits of error to be allowed on verification and to be tolerated on inspection either generally or as respects any trade ;

and generally for the guidance of local authorities in the execution and performance of their powers and duties under the Weights and Measures Acts.

(2) Any such regulations may confer on local authorities power to make special regulations as respects their areas in relation to the inspection of weights and measures and weighing instruments, and to other matters which, having due regard to uniformity of administration, appear to the Board of Trade to be matters which can be better regulated by special regulations.

(3) The Board of Trade regulations shall as soon as may

be after they are made, be laid before Parliament, and shall have effect as if enacted in this Act.

. . . . .

13.—*Amendments* . . . (3) In section four of the Act of 1889 the word "any" shall be substituted for the words "second or subsequent."

See p. 413, *ante*.

. . . . .

14. *Power for Inspectors to Prosecute.*—An inspector of weights and measures may, with the consent of the local authority, prosecute before a court of summary jurisdiction or justices any information, complaint, or proceeding arising under the Weights and Measures Acts, or in the discharge of his duties as such inspector.

16. *Amendment of s.* 35 *of* 52 *&* 53 *Vict. c.* 21.—The definition of "weighing instrument" in section thirty-five of the Act of 1889 shall include a weighing instrument constructed to also calculate and indicate the price in money.

See p. 414, *ante*.

WEIGHTS AND MEASURES (AMENDMENT) ACT, 1926.

(16 & 17 GEO. 5, c. 8.)

1. *Definition of Measuring Instrument.*—The definition of measuring instrument contained in section thirty-five of the Weights and Measures Act, 1889, shall be extended so as to include any instrument for the measurement of superficial area or for measurement by counting.

V.—THE SALE OF FOOD (WEIGHTS AND MEASURES: PRE-PACKED ARTICLES) REGULATIONS, 1927.

DATED JUNE 14TH, 1927, MADE BY THE BOARD OF TRADE UNDER PARAGRAPH (d) OF SUB-SECTION (1) OF SECTION 9 OF THE SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926 (16 & 17 GEO. 5, c. 63), PRESCRIBING THE MANNER OF MARKING INDICATIONS OF WEIGHT ON PRE-PACKED ARTICLES OF FOOD AND THE MANNER OF RE-SEALING WRAPPERS AND CONTAINERS BROKEN OPEN FOR INSPECTION.

STATUTORY RULES AND ORDERS, 1927, No. 528.

The Board of Trade, in exercise of the powers conferred upon them in this behalf by paragraph (d) of sub-section (1) of Section 9 of the Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. 5, c. 63), do hereby make the following Regulations, namely :—

1. These Regulations may be cited as the Sale of Food (Weights and Measures : Pre-packed Articles) Regulations, 1927, and shall come into force on the 1st January, 1928.

2. The indication of weight required by or under the Sale of Food (Weights and Measures) Act, 1926, to be marked on any pre-packed article of food shall be conspicuously and legibly marked in the manner hereunder prescribed, that is to say :—

(1) It shall be situated in a prominent position on the outside of the outermost wrapper or container or on a label securely attached thereto :

Provided that—

(a) where the outermost wrapper or container is of a transparent nature and the whole of the indication of weight is plainly and easily legible from the outside of the package the indication of weight may be marked on the next inner wrapper or container ; and

(b) where the indication of weight is marked on a label such label shall be so placed as not to obscure or to overlap any indication placed upon the package in pursuance of any other statutory requirement.

(2) It shall be printed, stamped, or written, in plain block characters not less than one-twelfth of an inch in height when the greatest dimension of the package does not exceed six inches, and not less than one-eighth of an inch in height when the greatest dimension of the package exceeds six inches.

For the purpose of this regulation the expression " greatest dimension " shall mean the height, length or breadth, whichever is the greatest, of a rectangular or approximately rectangular package, and the height or maximum diameter, whichever is the greater, of a cylindrical, oval, or conical package.

(3) It shall be complete in itself, that is to say, the various words or groups of characters composing the marking shall be associated together so as to be read as a whole, and shall not be modified in meaning by any other words, figures or other indications on the package ; and it shall contain no words, figures or other indications additional to those permitted by these regulations.

(4) The characters composing the indication shall be marked on a plain background and in distinct contrast thereto, that is to say, the characters shall be dark on a light background or light on a dark background.

(5) Denominations of weight shall be either spelt in full or if abbreviated shall be expressed by one or other of the abbreviations herein set forth, that is to say, for POUND or POUNDS the abbreviation LB., for OUNCE or OUNCES the abbreviation OZ., for HUNDREDWEIGHT the abbreviation CWT. The "ounce" denomination shall not be used alone to express a weight of over one pound.

(6) The number of units of a denomination of weight shall be placed before the denomination; where the denomination is spelt in full the number of units thereof shall be spelt in full, and where the denomination is abbreviated the number of units thereof shall be expressed in figures.

(7) Where the weight to be indicated is the net weight of the article of food enclosed in the package, the denomination or denominations of weight, together with the number of units thereof, shall either stand alone or shall be followed by the word NET or preceded by the words NET WEIGHT, as for example:—

2 LB.
2 LB. NET.
TWO POUNDS NET.
NET WEIGHT 1½ LB.
1 LB. 12 OZ. NET.

(8) Where the weight to be indicated includes the weight of the wrapper or container in which the article has been weighed for sale the denomination or denominations of weight together with the number of units thereof shall be either followed by the word GROSS or preceded by the words GROSS WEIGHT, as for example:—

2 LB. GROSS.
GROSS WEIGHT TWO POUNDS.

3. Where an Inspector of Weights and Measures or any duly appointed person acting on his behalf re-seals, as provided in sub-section (3) of Section 10 of the Act, any wrapper or container in which any pre-packed article of food is packed, he shall re-close such wrapper or container in such a manner as to avoid injury to the contents thereof and shall re-seal the wrapper or container with a firmly adherent label bearing a printed certificate in the form shown in the Schedule to these regulations so as to cover completely any broken portion of the wrapper or container and shall complete, sign and date the said certificate.

Signed by Order of the Board of Trade this 14th day of June, 1927.

H. A. Payne,
A Secretary to the Board of Trade.

SCHEDULE.

Form of certificate to be used by an Inspector of Weights and Measures or other duly appointed person in re-sealing wrappers or containers broken open in pursuance of the provisions of the Sale of Food (Weights and Measures) Act, 1926.

Borough (or County, City or County Borough) of.....

SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926.

I hereby certify that I have to-day examined this package, and found it to be of correct weight, as required by the above Act.

Admitted weight

(.....)

Signature.....

Date.....

VI.—NOTES ON THE SALE OF FOOD (WEIGHTS AND MEASURES) ACT, 1926, FOR THE GUIDANCE OF LOCAL AUTHORITIES.

The following notes have been prepared with the intention of assisting local authorities to administer the provisions of the above Act with that degree of uniformity which appears to be essential to its effectiveness.

As the Department have no power to interpret the provisions of the Act, these notes, so far as they have any interpretative implication, are only of the nature of suggestions, for the purpose of facilitating uniformity of action, particularly in respect of those points (*e.g.*, the position as regards pre-packed articles prior to January 1st, 1928) which appear to be the subject of considerable apprehension and misunderstanding on the part of traders and the general public.

A short Memorandum on the nature of the Act and a Summary of its provisions have already been prepared by the Department for the information of traders and other persons concerned; the Summary will be placed on sale by H.M. Stationery Office, and the Memorandum (which contains a reference to the Summary) will, it is hoped, be issued to the Press before July 1st.

1. Date of Operation.—From numerous inquiries received by the Department it appears that there exists amongst traders a widespread misapprehension to the effect that the Act does not come into actual operation until January 1st, 1928. Hence it is very desirable at the outset to take all practicable means to ensure that retailers may understand that they are required to conform with the general requirements of the Act as from July 1st. With regard to pre-packed articles (see 2, below), although s. 15 (2) might be read to mean that only such of the Act's provisions as relate *specifically* to pre-packed articles—other than tea—shall be inoperative until the expiration of the time limit fixed by the Board of Trade (*i.e.*, until the end of this year *), the Department are advised that the period of delay in respect of pre-packed articles refers to *all* of the provisions of the Act. In view of the fact that pre-packed articles made up (or imported) in one district are mostly distributed to retailers in various parts of the country, it is particularly desirable that local authorities should proceed uniformly in this connection. It is therefore recommended that no action should be taken under the Act in respect of pre-packed articles until January 1st next. At the same time it appears reasonable, and in fact desirable, to point out to packers and importers the necessity for making early arrangements to ensure the packing of their commodities in accordance with the procedure laid down in s. 4 of the Act, in order that they may not be burdened with unsaleable stock at the end of the year.

2. Pre-packed Articles.—In view of the doubts which have been expressed by traders as to the applicability of this expression to the articles made up for sale on the premises where they are sold or kept for sale by retailers (see proviso to s. 4 (2)), it would be well to note that the definition of the term in s. 13 (1) covers *any* article which is packed or made up in advance ready for retail sale in a wrapper or container. Retailers who make up packages of scheduled articles on their own premises in advance of sale, instead of weighing them at the time of purchase, would appear to be relieved of the necessity for marking them with an indication of weight if they pack them in the quantities set forth in the proviso to s. 4 (2), and, until January 1st, 1928, to be entitled to take advantage of the general exemption from the requirements of the Act in respect of pre-packed articles, under s. 15 (2) above mentioned. If, however, such articles are not actually sold on the premises where they are made up,

* See the Sale of Food (Pre-packed Articles) Order, 1927 (S. R. & O., 1927, No. 527).

e.g., if they are taken out on a vehicle for door-to-door sale, it would appear that they should be marked with an indication of weight. Attention is directed to the fact that, although pre-packed articles other than those of the kinds set forth in the Schedule are not required to comply with the requirements of s. 4, any statement of weight or measure made in respect of these will be subject to the provisions of s. 2.

3. Allowance for Wrappers.—Although in respect of the articles set forth in Parts II. and III. of the First Schedule, the weight of the wrapper or container is permitted to be included in the weight of the article sold only where the article is weighed for sale in such wrapper or container (s. 4 (1)), the Act does not appear to prohibit the enclosing of such articles in a further wrapper or container, *e.g.*, for protective purposes, so long as the weight of this is not included in the purported weight. In the opinion of the Department the terms of this section appear to imply that the article is to be sold in the wrapper or container in which it is weighed. Where the weight of the wrapper or container in which the article is weighed for sale is in excess of the limits prescribed, *full net weight* is required to be given.

4. Markings of Weight.—The regulations which have been made under the provisions of s. 9 (1) (d) * provide that the marking of weight shall be placed on the outermost wrapper, except where this is transparent, and for such marking to include the word "Gross" where the weight of the wrapper in which the article has been weighed for sale is included in the weight purported to be sold. The use of the word "minimum" in s. 4 (2) (b) of the Act appears to be intended to admit of a reasonable amount of overweight being included in a pre-packed article marked with an indication of weight of one of the quantities prescribed in paragraph (a), provided that no other representation is made or implied that the weight of the article is, in fact, greater than that stated.

5. Tea.—Although the Act embodies in substance the provisions of the Sale of Tea Act, 1922, it departs from those provisions in certain details. For example, it imposes no restrictions upon the quantities in which non-pre-packed tea may be retailed, provided that it is weighed in the presence of the purchaser or a statement of net weight is delivered with it; on the other hand, it restricts the scale of quantities in which tea may be pre-packed. The Act applies fully to the sale of tea, whether pre-packed or not, as from July 1st, and although the regulations prescribing the manner of marking the indications of weight on pre-packed tea and the manner of re-sealing packages broken open for inspection do not take effect until January 1st, 1928, the requirements of ss. 4 (2) (b), and 10 (3) of the Act will be operative.

6. Butchers' Meat.—With regard to the conditions in which a statement of weight is required, under s. 5 (2), to be furnished with the meat, attention is directed to the provision of s. 13 (2) as to the circumstances in which a person is to be deemed to weigh "in the presence of the purchaser."

7. Bread.—The provisions of the Act with regard to the sale of bread differ slightly from those previously in force. Loaves are required to be of the weight of 1 lb. or an integral (instead of even) number of pounds; French, pan and similar loaves are not exempted from the general requirements on the grounds that they are "fancy" bread (though in Scotland they may be of the weight of 1½ lb. if marked as such); persons in charge of vehicles are no longer specifically required to carry scales; the requirements of the Act being limited, except as regards pre-packed articles, to retail dealings, inspectors no longer have power to inspect bread on the premises of a wholesaler, or in course of delivery therefrom to a retailer; moreover, under s. 12, safeguards not hitherto available are afforded to the seller (but see 12, below). Where bread is sold or

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* The Sale of Food (Weights and Measures: Pre-packed Articles) Regulations, 1927 (S. R. & O., 1927, No. 528).

offered for sale from a travelling van it is possible that such a van would constitute a "shop or premises" within the meaning of s. 6 (4), and should therefore be provided with a weighing instrument; this, however, appears to be a matter which can be decided only by a court of law.

With regard to the indication of weight which is required to be marked upon 1¾-lb. loaves in Scotland, the Board of Trade have no power, except where the bread is pre-packed, to prescribe the form or manner of marking. Where, however, the indication is in such a form as to be ambiguous or misleading it would not appear to comply with the requirement that the weight shall be "clearly" marked. The provisions of the Sale of Food Orders of 1921 with regard to the sale of bread are revoked as from July 1st, 1927.*

8. Milk.—Where milk is sold in sealed bottles it would appear, normally, to constitute a "pre-packed article" within the meaning of s. 13 (1), and thus to be exempt from the requirements of the Act until January 1st, 1928.

9. Sales in Petty Amounts.—In determining whether the sale of an article should be exempted, under the provisions of s. 8, from the requirements of ss. 4, 5, 6 or 7 as a "sale in petty amounts," it will be necessary, where the price exceeds a penny, to consider whether the quantity sold *purports* to be less than 2 ounces. In order to fulfil this condition it would not appear to be sufficient that the weight of the article is, in fact, less than 2 ounces and/or that no representation of weight is made; it would appear to be necessary for the weight to be *represented* as less than 2 ounces.

10. Re-sealing Packages (Section 10 (3)).—The manner of re-sealing packages broken open for inspection under the Act is set forth in the Regulations above mentioned (see paragraph 4), and the form of certificate to be used in that connection is shown in the Schedule appended to those Regulations. In the space provided for "Admitted weight" is intended to be shown the *purported* weight which is admitted to be correct within the meaning of the Act, not the *exact* weight.

11. Inspectional Apparatus (Section 10 (4)).—The Department have under consideration the question of the provision of special apparatus for use in carrying out the provisions of the Act. In so far as weights and measures are concerned, the inspector should use his ordinary working standards. As regards weighing instruments, the inspector's ordinary outdoor beams will for many purposes be sufficient, although it would be desirable to provide one or more interchangeable pans in the form of a scoop, dish, etc., carefully adjusted so as to be equal in weight. Pending further instructions, the weight of these pans should be verified by the inspector himself. The Department understand that certain scalemakers are designing special instruments of this character.

In general there would appear to be no objection to an inspector using the trader's apparatus in order to obtain an indication as to whether short weight or measure was being given; but in any case where a prosecution may be contemplated the actual shortage should be ascertained by means of standard apparatus in the inspector's custody.

Before bringing any new instrument into use, the inspector should see that it has been verified and stamped by this Department.

12. Loss by Evaporation.—The defence of unavoidable evaporation permitted by s. 12 (3) applies not only to pre-packed articles, but to articles of food in general, including bread. It would not appear, however, to be available unless the defendant proves that due care and precaution had been taken *to avoid a deficiency*. To establish this it would apparently be necessary for him to prove that adequate allowance had been made for any evaporation which was *known* to be unavoidable, so that full net weight would be given at the time of sale (*e.g.*, in the case of bread, by making a marginal allowance, as has hitherto been the practice, when weighing out the dough). Moreover, this

* The Sale of Food (Revocation) Order, 1927 (S. R. & O., 1927, No. 526).

defence would not appear to be available as regards any articles but those actually delivered to a purchaser, though in the case of pre-packed articles of the kinds set forth in Schedule I. a comparable defence appears to be afforded by s. 4 (3).

The onus of proof that a deficiency found is, in fact, attributable to unavoidable evaporation appears to be placed upon the defence. The question as to what constitutes a fair allowance for evaporation is one which, in general, will be determinable only as the result of considerable experience in the working of the Act. As a rough guide in certain circumstances, the results of the test weighings made by the Standards Department and by certain inspectors, and shown as Annexe B to the Report of the Food Council (pp. 32–36), may be of some use, but reliable evidence as to the extent to which various commodities may vary in weight over long periods and under varying atmospheric conditions is not at present available.

13. Retail Dealings (Section 14).—With regard to the interpretation of the term " pre-packed " in s. 13 (1), it would appear desirable to take into account the custom of the trade in determining whether a particular article made up in a container is to be regarded as being made up in advance ready for retail sale. If no representation is made by the packer that the individual packages are of any definite weight, and if the packages are not normally sold by retail *intact*, it would not appear to be unreasonable to consider that they are not " made up in advance *ready for retail sale*," in which case they would not come within the definition of " pre-packed " articles ; and in such circumstances a retailer would not appear to be precluded from selling them intact, if specially asked for, provided that he either weighed them in the presence of the purchaser or delivered them with a legible statement of their weight, as prescribed in s. 4 (4). An instance in point is lard made up in bladders.

J. E. Sears, Jr.,

Deputy Warden of the Standards.

June, 1927.

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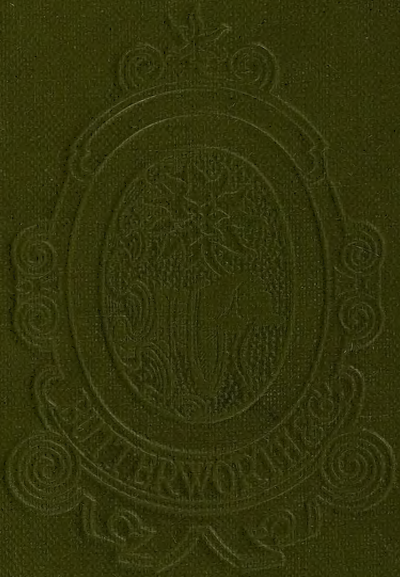
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